12-5-80
Vol. 45 No. 236
Pages 80463-80806

Federal Register

Friday
December 5, 1980

Highlights

80463 **National Advisory Community Investment Board** Executive Order

80465 **Peanut imports** Presidential memorandum delegating authority

80780 **Budget** OMB announces new deferrals and revises existing deferrals (Part VII of this issue)

80648 **Credit** FRS proposes complete revision of Regulation Z (Truth in Lending); comments by 1–19–81 (Part III of this issue)

80484 **Computers** Commerce/ITA requires technical information in support of applications for licenses to export software; effective 12–5–80; comments by 2–3–81

80483 **Loan Programs—Business** SBA provides for continued servicing of loans by private lenders both before and after purchase by SBA; effective 12–5–80

80485 **Commodities Exchanges** CFTC requires applicants for registration as associated persons be "sponsored" by a futures commission merchant; effective 7–1–81

80472 **Government Employees** OPM provides for changes in amount of basic life insurance; effective 12–9–80; comments by 2–3–81

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There are no restrictions on the republication of material appearing in the **Federal Register.**

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

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80482 **Petroleum Price Regulations** DOE/ERA provides for monthly increases in lower and upper tier crude oil price ceilings to reflect impact of inflation; effective 12–1–80

80551 **Windfall Profit Tax** Treasury/IRS proposes rules relating to treatment of front-end tertiary oil; comments by 2–3–81

80594 **Grant Programs—Health** HHS/PHS/HRA accepts applications for Allied Health Traineeship Grants for Advanced Training-Training Institutes (Short-Term); apply by 2–13–81

80746, 80760 **Mine Safety and Health** Labor/MSHA revises procedures for coal mine operator sampling of respirable dust and gives miners with pneumoconiosis symptoms the right to work in low dust areas; effective 2–1–81 (2 documents) (Part V of this issue)

80501 **Mine Safety and Health** Labor/MSHA defers until 6–21–81, requirement of self-contained self-rescuers in underground coal mines; effective 12–5–81

80790 **Food Stamps** USDA/FNS proposes procedures for demonstration project using monthly reporting and retrospective accounting (2 documents) (Part VIII of this issue)

80740 **Prescription Drugs** HHS/FDA requests comments on patient package insert for combination drug containing doxylamine and vitamin B_6 for treatment of "morning sickness"; comments by 1–19–81 (Part IV of this issue)

80500 **Blood** HHS/FDA amends storage temperature requirements for Source Plasma (Human) intended for manufacture into injectable products; effective 1–5–81

80502 **Freedom of Information** DOD/Sec'y establishes and prescribes uniform procedures and requirements; effective 11–3–80

80573 **Privacy Act Document** CFTC

80627 **Sunshine Act Meetings**

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80648 **Part III, FRS**
80740 **Part IV, HHS/FDA**
80746 **Part V, Labor/MSHA (2 documents)**
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80790 **Part VIII, USDA/FNS (2 documents)**

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Presidential Documents

Title 3—

The President

Executive Order 12254 of December 3, 1980

National Advisory Community Investment Board

By the authority vested in me as President of the United States of America by Section 704 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2981c), and in order to establish a National Advisory Community Investment Board, in accord with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered as follows:

1–101. There is established a National Advisory Community Investment Board which shall be composed of fifteen members in accord with Section 704 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2981c).

1–102. The Board shall perform the functions and carry out its activities as provided by Section 704 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2981c).

1–103. The Director of the Community Services Administration shall provide the Board with such administrative services and support as may be necessary.

1–104. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Board, shall be performed by the Director of the Community Services Administration in accordance with guidelines and procedures established by the Administrator of General Services.

1–105. The Board shall terminate on December 31, 1981, unless sooner extended.

Jimmy Carter

THE WHITE HOUSE,
December 3, 1980.

[FR Doc. 80-38063
Filed 12-4-80; 11:04 am]
Billing code 3195-01-M

Presidential Documents

Memorandum of December 3, 1980

Memorandum for the United States Trade Representative

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 301 of Title 3 of the United States Code, I hereby authorize you to perform on my behalf, with respect to the importation of peanuts only, all functions vested in me by Section 22 of the Agriculture Adjustment Act of 1933, as amended (7 U.S.C. 624).

This delegation of authority shall expire on January 20, 1981.

This memorandum shall be published in the **Federal Register.**

Jimmy Carter

THE WHITE HOUSE,
Washington, December 3, 1980.

[FR Doc. 80-38064
Filed 12-4-80; 11:05 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 45, No. 236
Friday, December 5, 1980

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

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

5 CFR Ch. XIV

Final Rules and Regulations (Listing of Sub-Regional Office Addresses)

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

ACTION: Final rule.

SUMMARY: This rule amends Appendix A paragraph (d)(2), (5), (7) and (8) of the final rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 45 FR 3482, to set forth addresses and telephone numbers of the Authority's Sub-Regional Offices within the Authority's New York, NY (Philadelphia, PA); Chicago, IL (Cleveland, Ohio); Kansas City, MO (Denver, Colo.); and Los Angeles, CA (Honolulu, Hawaii), Regional Offices.

EFFECTIVE DATE: December 2, 1980.

FOR FURTHER INFORMATION CONTACT: Alvin H. Gandal, Assistant General Counsel (202) 632-6860 and D. Randall Frye, Assistant General Counsel (202) 632-6284.

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

Appendix A, paragraph (d) of the rules and regulations (45 FR 3522) sets forth the current office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the addresses and telephone numbers of the Sub-Regional Offices of the Authority.

Accordingly, Appendix A, paragraph (d) is amended by adding to subparagraphs (2), (5), (7) and (8) the following:

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

* * * * *

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

* * * * *

(2)(a) *Philadelphia, PA Sub-Regional Office*—Room 5000, Mall Building, 325 Chestnut Street, Philadelphia, Pennsylvania 19106, Telephone: FTS—597-1527, Commercial—(215) 597-1527.

(5)(a) *Cleveland, OH Sub-Regional Office*—Room 821, Federal Office Building, 1240 E. Ninth Street, Cleveland, Ohio 44199, Telephone: FTS—293-3855, Commercial—(216) 522-3855.

(7)(a) *Denver, CO Sub-Regional Office*—Room 170, U.S. Customs House, 721 19th Street, Denver, Colorado 80202, Telephone: FTS—327-5224, Commercial—(303) 837-5224.

(8)(a) *Honolulu, Hawaii Sub-Regional Office*—Room 3206, 300 Ala Moana Blvd., Honolulu, Hawaii 96850, Telephone: FTS—556-0220, through the San Francisco FTS Operator, Commercial (808) 546-8355.

* * * * *

(5 U.S.C. 7134)

Dated: December 2, 1980.

Ronald W. Haughton,
Chairman.
Henry B. Frazier III,
Member.
Leon B. Applewhaite,
Member.
H. Stephan Gordon,
General Counsel.

[FR Doc. 80-37803 Filed 12-4-80; 8:45 am]
BILLING CODE 6727-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 317 and 359

Appointment, Reassignment, Transfer and Reinstatement in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with comments invited for consideration in final rulemaking.

SUMMARY: These interim regulations are issued pursuant to Section 404 of Title IV of the Civil Service Reform Act of 1978. They provide for the reinstatement to the Senior Executive Service of certain former SES career appointees.

They also move the regulations on restrictions on eligibility for reinstatement which is an editorial change.

DATES: Effective Date: December 5, 1980, and until final regulations are issued. Comment Date: Written comments will be considered if received no later than February 3, 1981.

ADDRESS: Send or deliver written comments to the Associate Director, Executive Personnel and Management Development, Office of Personnel Management, Room 6R48, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Ann Ugelow, (202) 632-6820.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

A new Subpart G is being added to Part 317 in Title 5, Code of Federal Regulations to cover reinstatements to the Senior Executive Service. The subpart regulates the two classes of reinstatement actions authorized under 5 U.S.C. 3593. The first is eligibility for reinstatement to an SES career appointment granted to a former SES career appointee who had completed probation and who was not separated from that former appointment for performance or misconduct. The second is entitlement to reinstatement to an SES career appointment granted to a former SES career appointee who received a Presidential appointment without a break in service and who left that appointment for reasons other than misconduct, neglect of duty or malfeasance.

Subpart I of Part 359 in Title 5, Code of Federal Regulations which was published as an interim regulation on July 31, 1979, (44 FR 44818), regulated restrictions on eligibility for

reinstatement. These restrictions have been incorporated into Subpart G of 5 CFR Part 317.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending Title 5, CFR, as follows:

(1) Part 317, Subpart G, is added to read as follows:

PART 317—APPOINTMENT REASSIGNMENT, TRANSFER AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

* * * * *

Subpart G—SES Career Appointment by Reinstatement

Sec.

317.701 Agency authority.

317.702 Reinstatement: SES career appointees.

317.703 Guaranteed reinstatement: Presidential appointees.

Authority: 5 U.S.C. 3593 and 3595.

Subpart G—SES Career Appointment by Reinstatement

§ 317.701 Agency authority.

As provided for in §§ 317.702 and 317.703, an agency may reinstate a former SES career appointee without regard to the merit staffing requirements established by the Office under 5 U.S.C. 3393(b).

§ 317.702 Reinstatement: SES career appointees.

(a) *Eligibility for reinstatement.* A former SES career appointee who meets the following conditions is eligible for reinstatement:

(1) The individual completed an SES probationary period under his/her last SES career appointment or was exempted from that requirement; and

(2) The individual's separation from his/her last SES career appointment was *not* a removal subject to Subpart E of Part 359 or Subpart F of Part 752 of this chapter, a removal subject to 5 U.S.C. 1206 or 7532, or a resignation in lieu of removal under these sections of law and regulation.

(b) *Applying for reinstatement; time limit.* Application for reinstatement under this section shall be made directly to the agency in which SES employment is sought. There is no time limit for reinstatement under this section.

(c) *Qualifications.* The individual must meet the qualification requirements of the position to which reinstated. The agency makes this determination.

(d) *Tenure upon reinstatement.* An individual who is reinstated under this section becomes an SES career appointee.

§ 317.703 Guaranteed Reinstatement: Presidential appointee.

(a) *Eligibility for reinstatement.* A former SES career appointee who was appointed by the President to a civil service position outside the Senior Executive Service without a break in service and who left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance, is entitled by law to be reinstated.

(b) *Applying for reinstatement; time limit.* Application for reinstatement under this section must be made to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

(c) *Directing reinstatement.* (1) The Office shall use the following order of precedence in directing the reinstatement of a former Presidential appointee:

(i) The agency in which the individual last served as an SES career appointee before accepting the Presidential appointment;

(ii) The successor agency to the one in which the individual last served as an SES career appointee; or

(iii) The agency or agencies in which the individual served as a Presidential appointee.

(2) If it is not possible to place the individual in one of the above agencies, the Office shall direct reinstatement to another agency in the Executive branch with positions under the Senior Executive Service.

(3) The agency being directed to take the reinstatement action shall be responsible for assigning the individual to a position for which he/she meets the qualifications requirements.

(4) When directing the reinstatement of a Presidential appointee, the Office may, as appropriate, allocate an additional SES space authority to the agency.

(d) *Tenure upon reinstatement.* (1) An individual who is reinstated under this section becomes an SES career appointee.

(2) An individual who was serving an SES probationary period at the time of his/her Presidential appointment is required to complete the 1-year SES probationary period upon reinstatement.

(e) *Compliance.* (1) An agency must comply with an order to reinstate issued by the Office under this section as promptly as possible but not more than 30 calendar days from the date of the order.

(2) An individual who declines an offer of reinstatement ordered by the Office shall not be entitled to further placement assistance by the Office under this section.

PART 359—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

Subpart I—[Revoked]

(2) Subpart I of 5 CFR Part 359 is revoked.

(5 U.S.C. 3593 and 3595)

[FR Doc. 80-37806 Filed 12-4-80; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 412

Executive and Management Development

AGENCY: Office of Personnel Manangement.

ACTION: Final regulations.

SUMMARY: These final regulations require agencies to establish programs for the development of candidates for and members of the Senior Executive Service, and provide criteria for such programs, as required by the Civil Service Reform Act of 1978, and require agencies to establish management development systems and/or programs.

EFFECTIVE DATE: December 5, 1980.

FOR FURTHER INFORMATION CONTACT: Merle Junker, (202) 632-4661.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1980, OPM published proposed regulations in the **Federal Register** (45 FR 29300) that would require agencies to establish executive development programs as prescribed, and provide criteria as authorized, by Section 403 of the Civil Service Reform Act. The 60-day period for interested parties to submit written comments ended on July 1, 1980.

Discussion of Comments

Twenty-five written comments were received, twenty-four from agencies and one from an individual. In addition, there were a number of telephone inquiries concerning specific provisions of the proposed regulations.

(1) Eight respondents either expressed general agreement with the regulations as written or stated that they had no changes to suggest.

(2) One respondent, on behalf of 44 smaller agencies, stated: "Section 412.103 is particularly troublesome in that it requires each agency with SES positions to have a formal candidate development program. This section does not allow for the possibility that because of size, organizational structure, or peculiar dynamics a formal candidate development program may be quite inappropriate for a particular agency. The section seems to have been written without full consideration of small agencies, paragraph (b) of the section notwithstanding." The passage referred to says that small agencies may meet the requirements by developing programs administered by other agencies. We have reconsidered these provisions; in light of the fact that the statute makes no provision for the exemption of any agency, we believe the regulation provides more than ample flexibility for establishing sensible programs in any agency context—including programs that may be limited in scope.

(3) Two agencies recommended elimination of the requirement in § 412.107(c)(2) that participants in SES candidate development programs take part in an OPM-prescribed training experience. The training referred to is intended to be a developmental experience to be shared by candidates from different agencies and reflects the Governmentwide nature of the Senior Executive Service. Two agencies and an individual respondent question the use of OPM as the source of this training. The training at present prescribed by OPM is based on the best available research on executive competencies. OPM's policy at present permits individuals who demonstrate those competencies to be excused from the training. Furthermore, OPM is developing procedures for evaluating training programs as alternatives to the OPM course. Approval of these alternatives will, however, depend on the degree to which they address the same competencies in an interagency setting. We believe that there is a clear need for a common training experience for all SES candidates focused on the complex environment within which Federal executives work. We further believe that this common training experience should have a national as opposed to an agency focus and that it can best be provided by a single Federal agency. OPM, which has oversight over the SES, is the logical Federal agency to provide this service.

(4) Two respondents questioned the requirement, in § 412.107(c)(6) that selection for SES candidate development programs focus primarily on individuals who are just below the SES level. One felt it is too vague, the other that it is unnecessarily restrictive. The point of the provision is to tap "the primary sources from which exceptional persons with the most relevant backgrounds, experience, and skills may be found upon whom executive development efforts can focus with maximum cost-effectiveness." (Task Force on Executive Development in the SES, June 1978). The phrasing of the requirement in non-specific because some organizations have entry-level executive positions at GS–15 and for them it would be appropriate to consider individuals at GS–14; it also provides the flexibility needed to permit limited intake, under special circumstances, from other, secondary sources.

(5) One individual respondent questioned the requirement that each participant in an SES candidate development program have a mentor, but without any supporting rationale. Two pointed out that "mentor" has been replaced by the term "senior advisor" in OPM guidance and suggested that the same change be made in the regulation; this has been done.

(6) Two departments and four independent agencies (one of them on behalf of 44 smaller agencies) objected to the language in § 412.503 that "agencies shall establish dual programs for the development of candidates for the SES * * *," and another asked for clarification. The passage has been rephrased to state that two types of programs (status and non-status) are authorized. However, even in agencies which do not recruit from outside Government or from outside the agency, agency employees serving on other than career or career type appointments will have a right to apply and be considered for SES candidate development programs. This authorization will provide a flexible means for bringing such individuals into the development process if they are selected. The differences between the two programs need be no greater than what is dictated by differences in the developmental needs of the candidates.

(7) Two respondents discussed the material on veteran preference: one suggested that the provision in § 412.507(b)(3) be dropped on the ground that it is discriminatory; the other asked if its wording meant that veteran preference need not be applied if not administratively feasible. By law, veterans must be given preference for appointment to all positions in the competitive and excepted services (although not the Senior Executive Service). The language used in § 412.507(b)(3) is taken from the controlling regulation, 5 CFR 302.101(c), which governs selections for those positions in the excepted service which are exempt from the specific appointment procedures for the excepted service generally.

(8) One agency thought that the three-year limitation on appointments made under the special Schedule B authority for SES candidate development programs will provide insufficient time to prepare individuals selected from outside the Government for the SES. We believe the problem derives more from the circumstances of that agency's organizational and job structure than from inherent requirements of executive development Governmentwide. We consider that three years should suffice in the great majority of cases, and that for the integrity of the program there definitely needs to be a limit on the length of time an individual may serve in these special-purpose appointments.

(9) Three agencies objected to the goal of an eight-percent level of intake from outside an agency for its candidate development program. Eight-percent intake is not expressed as an absolute requirement, however, but as a level which will be taken as prima facie evidence of good-faith outside recruitment—which is a requirement.

(10) Another reviewer pointed out that the phrase in § 412.107(c)(4)(ii), which is taken from the Civil Service Reform Act, should read, "All groups of *qualified* individuals * * *." The complete phrase has been restored.

(11) There were three suggestions for dropping the requirement that SES members have individual development plans (IDP's) on the grounds that many members will not need development or that the requirement will not be observed in practice. We agree that where requirements for IDP's have existed in the past they frequently have not been met. We also know, however, that the IDP can be a powerful tool. In addition, the Senior Executive Service is intended to be different, and members must be concerned not only with keeping current in relation to competencies needed in their present assignments, but with preparing for the possibility of being called upon to move on to other assignments within the SES. Since the IDP is precisely what the executive and the agency make of it, it cannot be an onerous requirement in any case.

(12) There were also three suggestions that there not be a requirement for Executive Resources Board (ERB) review of the IDP's of SES members. Although it was not envisioned ERB's

would necessarily involve themselves in all details of plans for the executives in their jurisdictions, it was and continues to be the OPM view that ERB's must exercise close supervision over the IDP process. In order to avoid any misunderstanding, however, the passage is being changed, to take out the word "review" and leave stand the requirement for ERB approval.

(13) One agency suggested that the regulation provide that individuals selected to participate in SES candidate development programs should continue to serve in their regular positions. We believe that agencies should be permitted to follow a variety of practices; if experience proves that part-time programs are invariably superior to intensive full-time ones, such a requirement could be added at a later time.

(14) Another organization suggested that OPM specify, in the regulation, the respective roles of the department or agency level and the bureau or command level. But this is a matter of matching executive development program management to the agency's approach to management generally; we think that differing approaches will suit different agency cultures and find no basis for directing that they follow any one.

(15) One agency questioned the need to "formalize the executive development guidelines to this extent this early in Civil Service Reform." We share the respondent's interest in agency innovation and experimentation, but are convinced that they will not be inhibited by these regulations which do little more than establish minimum levels for complying with CSRA.

(16) One respondent states that § 412.107(d)(2) establishes OPM as the "lone determiner of executive competencies, replacing the user agencies." But this is not the case; the "prescribed by * * *" phrase at the end of the passage refers to the training experience, not the competencies.

Modification of the Proposed Regulations

As a result of the written comments we received and our own further consideration of the proposed regulations, we have made the following specific changes in the final regulations, as indicated below:

[1] § 412.103 has been rewritten to make clear the intention to require that agencies have management development programs. The title of this part has been changed to Executive and Management Development, and "management" has been added to the phrase in the text.

[2] § 412.107(c)(4)(ii) is revised to add the word "qualified," making the expression identical with the statutory provision from which it is derived.

[3] § 412.107(d)(3) is revised, to change the word "mentor" to "senior advisor."

[4] § 412.107(e)(1) is revised to eliminate the requirement for executive resources boards to review the individual development plans of SES members, leaving only the requirement for approval.

[5] § 412.107(f) is revised to require "systems and/or selective programs for the development of managers" instead of "* * * programs * * *". This reflects a distinction established by the May 1980 report of the interagency Management Advisory Committee; this change provides agencies with greater flexibility.

[6] § 412.109 has been added, to provide a regulatory basis for the previously-established requirement for agencies to submit updates on the executive development program plans under which they are establishing their programs.

[7] § 412.503 has been modified to eliminate the reference to a requirement for separate candidate development programs, one for employees serving under career or career-type appointments and the second for all others.

The Director of the Office of Personnel Management has determined that good cause exists for these regulations to become effective immediately; it is necessary to require timely submissions of the first updates of agency executive development program plans, as provided for in § 412.109.

Note.—The Office of Personnel Management has determined that this is a significant regulation for purposes of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR Part 412 is added to read as follows:

PART 412—EXECUTIVE AND MANAGEMENT DEVELOPMENT

Subpart A—General Provisions

Sec.
412.101 Purpose.
412.103 Requirement for agency programs.
412.105 Approval of agency programs.
412.107 Criteria for agency executive and management development programs.
412.109 Submissions to OPM.

Subparts B—D—[Reserved]

Subpart E—Senior Executive Service Status and Nonstatus Candidate Development Programs

Sec.
412.501 Purpose.
412.503 Policy.
412.505 "Status" programs.
412.507 "Non-status" programs.
412.509 Competitive appointments.

Authority: 5 U.S.C. 3397.

Subpart A—General Provisions

§ 412.101 Purpose.

This subpart sets forth the requirement for agencies to establish executive and management development programs, and prescribes the criteria of the Office of Personnel Management for such programs, which implement subsections (a) and (b) of section 3396 of title 5, United States Code, and are prescribed under the authority of section 3397 of title 5, United States Code.

§ 412.103 Requirement for agency programs.

(a) Each agency shall establish and maintain an executive and management development program, to consist of the following components:

(1) A program(s) for the continuing development of senior executives.

(2) For an agency with positions in the Senior Executive Service, a program(s) for the systematic development of candidates for the Senior Executive Service; small agencies, those with 150 SES positions or fewer, may meet this requirement by developing programs jointly with other agencies or by participating in programs administered by other agencies.

(3) Either or both of the following, for the development of managers:

(i) Open management development systems offering management development opportunities to all incumbent managers and some potential managers.

(ii) Selective management development programs offering management development opportunities to competitively selected employees.

(b) Each agency's executive and management development program(s) must conform to criteria prescribed in § 412.107 of this subpart.

§ 412.105 Approval of agency programs.

The Office shall review periodically agency executive and management development programs and approve those which meet the criteria prescribed in § 412.107. Whenever approved agency programs are found to fall substantially short of meeting any of the criteria, OPM

approval will be withdrawn until the agency takes the necessary corrective action to bring the program into compliance.

§ 412.107 Criteria for agency executive and management development programs.

(a) *Program management.* Overall planning and management of the agency executive and management development program(s) shall be provided by a departmental or independent agency executive resources board or a complex of executive boards at agency and subordinate levels. Executive resources boards shall ensure that executive and management development programs are efficiently and effectively implemented as indicated by systematic evaluation of the program and by the incorporation of evaluation results into planning for successive program operations. Boards shall also ensure that executive development programs and activities are integrated into and consistent with the agency's Senior Executive Service personnel system.

(b) *Funding and staffing.* Each program established under § 412.103 shall include provisions for funding and staffing needed to support the program. Each agency must be able to demonstrate that planned expenses for staff services, developmental assignments, selection procedures, formal training, program evaluation, and related matters will be met. Each agency must also be able to demonstrate that it is providing adequate numbers of competent staff to support planned executive and management development activities.

(c) *SES candidate development programs.* (1) *Selection systems.* Qualifications Review Boards (QRBs) established by OPM must, by law, certify the executive qualifications of all candidates for initial career appointment to the SES, including candidates who shall have completed approved executive development programs. However, the QRB shall presume that a candidate who successfully completes an SES candidate development program approved by OPM meets the executive qualifications for initial career appointment to the SES. Individuals certified by a QRB on the basis of completion of an executive development program are automatically in the "well qualified" group for any managerial position for which they meet the technical/professional qualifications and may be appointed to the SES without further merit competition. Therefore, selections for participation in candidate development programs are considered to be part of the process of selection for the SES, must follow the SES merit staffing procedures prescribed by OPM, must comply with the Uniform Guidelines on Employee Selection Procedures, and must provide for the removal from the program of individuals who do not make satisfactory progress as determined by the agency Executive Resources Board. In addition, selection systems for SES candidate development programs shall:

(i) Be based on the managerial and technical competencies required in the agency's SES positions;

(ii) Serve to further progress toward affirmative action goals;

(iii) Provide, in each agency with over 150 SES positions, for recruitment of candidates from all groups of qualified individuals within the civil service, or from all groups of qualified individuals, whether or not within the civil service. Programs that over a three-year period average eight per cent candidate intake from other agencies and/or outside the civil service shall automatically be considered to be in compliance with this requirement;

(iv) Be based on projections of anticipated SES vacancies, made at least biennially, with the number of candidates selected to be no greater than twice the number of projected vacancies; and

(v) Focus primarily on individuals who are just below SES level.

(2) *Development of SES candidates.* (i) Each participant in an SES candidate development program shall have an individual development plan ("IDP"), approved by the appropriate executive resources board, specifying the developmental activities (work assignments, training, education, and/or orientation) to be undertaken during the course of the program. These activities shall be tailored to provide the individual with the executive competencies needed by SES members Governmentwide and in the agency's SES positions, and must include participation in an interagency executive development training experience, prescribed by the Office, which focuses on Governmentwide executive competencies. Agencies may apply to OPM for a waiver of the interagency executive development training experience for individual SES candidates on a case by case basis.

(ii) Each participant in an SES candidate development program shall have a member of the Senior Executive Service as a senior advisor.

(d) *Development of SES members.* Systems for the continuing development of SES members shall:

(1) Include preparation, implementation, and regular updating of an individual development plan for each SES member, to be approved by the appropriate executive resources board. These plans shall be tied to the performance appraisal cycle and focus on the enhancement of existing competencies as well as the correction of deficiencies identified in performance appraisals, and on preparing SES members for future assignments; and

(2) Result in developmental experiences for SES members which, through continuing short-term opportunities and periodic involvement in longer-term programs, will:

(i) Help to meet organizational needs for managerial improvement and increased productivity;

(ii) Help SES members to keep up-to-date in professional, technical, managerial, sociological, economic and political areas; and

(iii) Meet the individual needs of SES members for growth and development—intellectually and personally; and

(3) Include provisions for executive sabbaticals for carefully selected members as provided for by subsection (c) of section 3396 of title 5, United States Code.

(e) *Management development.* Executive development programs shall be linked to more comprehensive systems and/or programs for the development of managers. Such systems and/or programs shall:

(1) Provide management training and development experiences for both incumbent managers and specialists identified as having potential at grades GS–13 through GS–15 to meet agency and individual needs;

(2) Serve to further progress toward affirmative employment goals (where appropriate to this purpose, an agency may include employees at grade GS–12);

(3) Be designed to improve accountability, productivity and performance at the mid-management level; and

(4) Provide a foundation of early management training and appropriate developmental experiences for SES candidate development programs.

§ 412.109 Submissions to OPM.

(a) Each agency making or intending to make more than five career appointments to the Senior Executive Service shall establish its executive and management development program in accordance with a program plan which has been approved by OPM.

(b) These agencies shall submit formal updates of their executive and management development program plans as of December 31, 1980, and

October 1, 1981, 1982 and 1983. Updates should be submitted by the chairperson of the departmental or independent agency executive resources board.

(c) Agencies shall also inform OPM of any significant changes as they occur during the fiscal year.

(d) Agencies whose programs are sufficiently well established during the first three years may be exempted, by the letter granting long-term OPM approval of their programs, from the later updates.

Subparts B—D—[Reserved]

Subpart E—Senior Executive Service Status and Nonstatus Candidate Development Programs

§ 412.501 Purpose.

This subpart sets forth regulations establishing two types of SES candidate development programs and prescribing their use by agencies.

§ 412.503 Policy.

Section 3393 of title 5, United States Code, requires that career appointees to the SES be recruited either from all groups of qualified individuals within the civil service, or from all groups of qualified individuals whether or not within the civil service. In order to accommodate candidates from various sources in the most flexible manner possible, two types of programs (which may be administered in close coordination with each other) are authorized:

(1) "Status" programs for the development of candidates serving in career and career-type appointments, and

(2) "Non-status" programs for the full-time development of candidates selected from outside Government and/or from among employees serving on other than career or career-type appointments within the civil service, utilizing the Schedule B appointing authority authorized by 5 CFR 213.3202(j).

§ 412.505 "Status" programs.

Only employees serving under career appointments, or under career-type appointments as defined in 5 CFR 317.304(a)(2), may participate in these programs.

§ 412.507 "Non-status" programs.

(a) *Eligibility.* For Schedule B programs, eligibility is restricted to individuals other than employees serving under career appointments, or under career-type appointments as defined in 5 CFR 317.304(a)(2).

(b) *Requirements.* (1) An appointment under the Schedule B authority may not exceed, or be extended beyond, three years.

(2) Agencies must document, as part of their executive development program plan submitted to OPM for approval, the kinds of additional developmental experiences which will be provided to individuals selected for these programs. OPM shall be notified promptly of any such changes to agency plans.

(3) Schedule B appointments must be made in the same manner as merit staffing requirements prescribed for the SES, except that each agency shall follow the principle of veteran preference as far as administratively feasible. Positions filled through this authority are excluded under 5 CFR 302.101(c)(6) as positions exempt from appointment procedures of Part 302.

(4) Assignments must be for developmental purposes connected with the SES candidate development program. Candidates serving under Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

§ 412.509 Competitive appointments.

(a) An agency must use the Schedule B excepted appointment authority [§ 213.3202(j)] to fill positions established exclusively for the agency's non-status executive development program.

(b) An agency may not use competitive appointment authorities to fill these positions.

(c) However, an agency may use competitive appointment authorities to fill permanent vacant positions when the appointee is simultaneously being selected as a participant in the agency's status SES candidate development program.

[FR Doc. 80-37805 Filed 12-4-80; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 870

Basic Life Insurance; Interim Regulations

AGENCY: Office of Personnel Management.

ACTION: Interim regulations, with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management is issuing interim regulations governing the first phase of implementation of the Federal Employees' Group Life Insurance Act of 1980 (FEGLI), approved October 10, 1980, which in part provides for changes in the amount of basic insurance (formerly called "regular insurance") for younger employees and in the amount of basic life insurance available to individuals who lose basic insurance coverage as employees, but who are eligible to continue life insurance coverage while in receipt of retirement annuity or workers' compensation.

DATES:

Effective date: The interim regulations are effective on December 9, 1980, unless otherwise specified.

Comment date: Comments must be received on or before February 3, 1981.

ADDRESS: Send written comments to Mr. Craig B. Pettibone, Director, Office of Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: John Landers (202) 632-4684.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, United States Code, the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to give immediate and timely effect to provisions of Pub. L. 96-427 which extend a basic life insurance benefit to individuals who become eligible to continue this coverage during retirement or receipt of workers' compensation as early as December 9, 1980.

The FEGLI Program has been amended by Pub. L. 96-427, the Federal Employees' Group Life Insurance Act of 1980, approved October 10, 1980. The Act makes four major changes in the FEGLI Program by: (1) increasing basic FEGLI protection (beginning in October 1981) for employees under age 45 with no corresponding increase in premiums, (2) requiring employees who retire or become entitled to receive workers' compensation after 1989 to continue paying premiums for unreduced basic insurance coverage to age 65, (3) permitting retiring employes to choose either the current post-retirement basic life insurance protection, which ultimately declines to 25 percent of the face value, or post-retirement coverage that, for an additional contribution, reduces at a lesser rate or not at all, and (4) adding to the existing $10,000 optional insurance two new optional insurance plans affording additional life insurance on employees in multiples of one to five times annual pay, as well as life insurance on family members.

The Act allows OPM from 60 to 180 days in which to implement the increased post-retirement basic insurance coverage and to make available the two new optional plans. OPM has decided to implement the offering of increased post-age 65 basic life insurance at the earliest date permitted under the law, December 9,

1980 (60 days after enactment). The present issuance of interim regulations in Part 870 of Title 5, Code of Federal Regulations, governing basic insurance available under FEGLI, represents the first phase of the implementation of Pub. L. 96–427. The two new optional FEGLI plans will be implemented through an open enrollment period in March 1981, with new enrollments effective on or after April 1, 1981. Interim regulations governing the optional FEGLI plans will be issued as soon as possible.

The interim regulations now being published on basic insurance provide for cancellation of all waivers of basic (regular) insurance coverage filed on or before February 28, 1981. The effective date of this cancellation of waivers will generally be April 1, 1981. Because coverage under basic insurance is, in the absence of an uncancelled waiver, automatic for non-excluded employees, those employees who waived basic insurance coverage before March 1, 1981, will have to waive the coverage during March 1981 or the coverage will automatically attach on the first day the employee enters a duty and pay status on or after April 1, 1981. This date will also be the effective date for the three optional coverages which an employee may elect during March 1981. The April 1, 1981 effective date will not apply with respect to individuals who have not turned down the coverage in the past. These individuals will continue to be covered during the open season, as will new hires during March 1981 who do not choose to file a waiver of basic insurance.

In these regulations, the language "actually enters on duty in a pay status" in § 870.204(d) should be interpreted as requiring an employee to actually return to duty at his/her workplace. See the interpretation of the indentical language in *Helland v. Metropolitan Life Insurance Co.*, 488 F. 2d 496 (9th Cir., 1973).

Under these regulations an employee who loses basic insurance coverage as an employee on or after December 9, 1980, and who is eligible to continue the life insurance during receipt of annuity or workers' compensation, will be required to file an election as to the amount of post-age 65 basic life insurance he/she desires as permanent protection.

Under previous law and regulations, an individual eligible to continue basic life insurance during receipt of annuity or compensation continued the coverage free of cost and the amount of insurance reduced in face value by 2 percent a month beginning with the second calendar month after the individual became 65 years of age or retired, whichever occurred later. The maximum reduction was 75 percent. Under the current law and interim regulations, an employee will have three choices of post-age 65 basic life insurance coverage. He/she may elect: (1) free coverage which reduces by 2 percent a month after age 65, with a maximum reduction of 75 percent, (2) immediate and continuous withholdings from annuity or compensation payments at the rate of $7.80 per year per $1,000 of face value, and the amount of coverage will reduce by 1 percent a month after age 65, with a maximum reduction of 50 percent, or (3) immediate and continuous withholdings from annuity or compensation payments at the rate of $21.00 per year per $1,000 of face value, and no reductions in value. For employees who retire or commence compensation after December 31, 1989, election (1), which is now without cost, will also require annuity or compensation withholdings. For this reason, the interim regulations list four elections, with the other election for use by those individuals who do not wish to continue any FEGLI insurance during retirement or receipt of compensation. It should be noted that OPM will require an election to be filed at the time the opportunity to continue insurance arises. The time limit for such an election is loosely defined as being prior to the time that OPM completes approval of the individual's application for retirement or request to continue insurance during receipt of compensation. Such a time limit will allow OPM to communicate with those employees who have not filed an election by the time final OPM action is to be taken. An employee who does not file a timely election to continue life insurance, will be deemed to have elected the 25 percent floor, which will be without cost to employees separating through 1989. An election for increased post-age 65 coverage and premiums may be canceled at any time. The effect of a cancellation will be to immediately reduce the amount of coverage in force to the amount that it would have been had the individual originally elected the 25 percent floor.

For employees under age 45, Pub. L. 96–427 provides increased basic life insurance effective on the first day of the first pay period beginning on or after October 1, 1981. As under existing law, basic coverage under Pub. L. 96–427 generally will be the employee's annual pay rate rounded up to the next multiple of $1,000, plus $2,000. For example, an employee whose annual pay is $17,500 will have basic coverage of $20,000.

This basic coverage is dubbed "basic insurance amount" in the law and in the interim regulations, which will make use of an acronym (BIA) for greater clarity, and to avoid confusion between the BIA and phrases such as "amount of basic insurance" or "basic insurance coverage." The increase in basic life insurance for employees under age 45 will be computed by multiplying the BIA by a factor of 2 for employees age 35 or under, by a factor of 1.9 at age 36, and so on until the factor is 1.0 for employees age 45 or over. The factors will not be applied for the purposes of the accidental death and dismemberment insurance benefit. The increase in coverage will not increase the withholdings employees pay, but rather will be financed through imposition of the requirement, delayed until 1990, that post-retirement basic coverage be subject to annuity or workers' compensation withholdings which will end when the amount of insurance coverage begins to reduce after age 65.

The cost of basic insurance will continue to be shared at the rate of ⅓ by the Government and ⅔ by the employee. However, former employees who elect post-employment withholdings for increased post-age 65 coverage will pay the entire cost of the coverage over and above the 25 percent floor.

The law and its legislative history are not specific as to whether the increase in basic life insurance should apply to retirees and compensationers under age 45. OPM has decided that this benefit will apply to these individuals, provided that they lose coverage as employees (and continue coverage during receipt of annuity or compensation) on or after the October 10, 1980 enactment date of Pub. L. 96–427. To provide otherwise would mean that an employee who suffers an on-the-job injury or who is forced to retire for disability at an early age could lose up to half of his/her basic life insurance coverage.

Pub. L. 96–427 provides that an agency which erroneously fails to withhold, or under-withholds FEGLI deductions from an individual's pay, annuity or compensation, may waive collection of the full amount due if the agency judges that the individual is without fault and recovery would be against equity and good conscience. However, if the agency waives the collection of any unpaid amount, it must still submit the uncollected FEGLI withholdings and agency contributions for deposit to the Employees' Life Insurance Fund.

Current civil service retirement regulations, 5 CFR Part 831, provide standards for waiver of overpayments from the Civil Service Retirement Fund.

The interim regulations promulgated here provide that these standards will govern waivers of collections of withholdings in cases in which OPM fails to withhold proper FEGLI deductions from annuity. Agency standards for waivers of overpayments from salary will be those which the agency must follow under 4 CFR Chapter I, Subchapter G, which implements the provisions of 5 U.S.C. 5584 allowing agencies to waive collection of overpaid salary or allowances. Specific instructions relating to submission of amounts waived and corresponding agency contributions will be issued through the Federal Personnel Manual System, Supplement 870–1.

Under current life insurance regulations an insured annuitant who becomes reemployed in a position in which he/she is not excluded from life insurance coverage is automatically covered as an employee for basic life insurance and accidental death and dismemberment insurance, unless he/she waives all insurance coverage. Also, the amount of the basic benefit payable upon death during or after reemployment is guaranteed to be at least as great as if the individual had not been reemployed. Under these interim regulations this guarantee will operate only while the annuitant is reemployed. Following reemployment the basic life insurance benefit will not be greater than the amount actually continued following separation. This change reflects the Pub. L. 96–427 requirement that separating employees elect and pay for the amount of insurance continued after employment.

At the time OPM publishes final regulations, uniform nomenclature changes and editorial revisions will be added throughout 5 CFR 870.

Note.—OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending Part 870 of Title 5, Code of Federal Regulations, as follows:

(1) The heading of Part 870 is revised to read as follows:

PART 870—BASIC LIFE INSURANCE

(2) In Subpart A, § 870.101 is revised to read as follows:

§ 870.101 Actions on the policy.

Life and accidental death and dismemberment benefits ("basic insurance") shall be payable in accordance with a policy or policies purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, under section 8709 of title 5, United States Code. Actions at law or in equity to recover on an insurance policy, in which there is not alleged any breach of any obligation undertaken by the United States, should be brought against the insurance company.

(3) In Subpart B, § 870.204(d) is revised to read as follows:

§ 870.204 Cancellation of waiver of insurance coverage.

* * * * *

(d) Waivers of basic insurance coverage filed on or before February 28, 1981, are automatically canceled effective on the first day an employee whose waiver is so canceled actually enters on duty in a pay status on or after April 1, 1981. Basic insurance coverage automatically attaches on the date of the cancellation unless the employee files with his/her employing office a waiver of basic insurance before the end of the pay period during which the cancellation became effective.

(4) In Subpart C, § 870.301 and § 870.302(a) are revised to read as follows:

Subpart C—Amount of Insurance

§ 870.301 Basic insurance amount (BIA).

(a) An employee's basic insurance amount (BIA) is equal to the greater of (1) his/her annual rate of basic pay, rounded to the next higher multiple of $1,000, plus $2,000, or (2) $10,000, but in no event may the BIA be more than the annual rate of pay for positions at Level II of the Executive Schedule under section 5313 of title 5, United States Code, rounded to the next higher thousand, plus $2,000. The BIA of an individual who is entitled to continue basic life insurance coverage as provided in §§ 870.601 and 870.701 is the employee's BIA in effect at the time the insurance to which he/she is entitled as an employee would stop under § 870.501.

(b) Effective on the first day of the first pay period beginning on or after October 1, 1981, the amount of an employee's basic life insurance coverage is equal to his/her BIA multiplied by the appropriate factor determined on the basis of the age of the insured individual, as follows:

Age	Factor
35 or under	2.0
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0

§ 870.302 Annual rates of pay.

(a) An insured employee's annual pay is his/her annual basic pay rate as fixed by law or regulation, except that annual pay for this purpose shall include premium pay under section 5545(c)(1) of title 5, United States Code, and, for a law enforcement officer as defined under 5 U.S.C. 8331(20) and § 831.903 of this title, premium pay under 5 U.S.C. 5545(c)(2).

* * * * *

(5) Subparts D, F, and G are revised to read as follows:

* * * * *

Subpart D—Withholdings and Contributions

870.401 Withholdings and contributions.

* * * * *

Subpart F—Retired Employees

870.601 Eligibility for life insurance.
870.602 Amount of life insurance.

Subpart G—Employees' Compensation

870.701 Eligibility for life insurance.
870.702 Amount of life insurance.

* * * * *

Subpart D—Withholdings and Contributions

§ 870.401 Withholdings and contributions.

(a) During any period in any part of which an insured employee is in pay status, $0.255 for each $1,000 of the employee's BIA shall be withheld from the biweekly pay of the employee. The amount withheld from the pay of an employee who is paid on other than a biweekly basis is determined at a proportionate rate.

(b) The amount withheld from the pay of an insured employee whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate of $0.255 for each $1,000 of the employee's BIA to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

(c) The amount withheld from the pay of an insured employee whose amount of insurance changes during a pay period is based on the last BIA in force during the pay period.

(d) For each period in which an employee is insured there shall be contributed from the respective appropriation or fund which is used for

the payment of his/her pay (or, in the case of an elected official, from such appropriation or funds as may be available for payment of other pay of the same office or establishment) an amount equal to one-half the amount withheld from the employee's pay.

(e) Notwithstanding paragraphs (a), (b), (c), and (d) of this section, the United States Postal Service contributes the full cost of basic insurance, that is, the sum of the amounts otherwise to be withheld and contributed under paragraphs (a), (b), (c), and (d) of this section, for each period in which an employee of the United States Postal Service is insured.

(f)(1) Except as provided under paragraph (g) of this section, an insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under §§ 870.601(c)(2) or 870.701(c)(2) (maximum reduction of 75 percent after age 65) shall have withheld from his/her payments basic life insurance withholdings at the monthly rate (for annuitants) of $0.55 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.128 for each $1,000 of the BIA.

(2) An insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under §§ 870.601(c)(3) or 870.701(c)(3) (maximum reduction of 50 percent after age 65) shall have withheld from his/her payments basic life insurance withholdings at the monthly rate (for annuitants) of $0.65 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.150 for each $1,000 of the BIA.

(3) An insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under §§ 870.601(c)(4) or 870.701(c)(4) (no reductions) shall have withheld from his/her payments basic life insurance withholdings at the monthly rate (for annuitants) of $1.75 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.404 for each $1,000 of the BIA.

(g) Basic life insurance withholdings required under paragraph (f)(1) of this section shall not apply for an individual who retires or commences compensation payments before January 1, 1990, and shall not be made for any month after the calendar month in which the individual becomes 65 years of age.

(h)(1) If OPM fails to withhold proper amounts of life insurance deductions from the annuity of a retired employee, OPM may waive the collection of the unpaid insurance deductions in accordance with section 8707(d) of title 5, United States Code. OPM shall use the standards for waiver of overpayments found under Subpart N of Part 831 of this title when determining whether a waiver of collection of the unpaid deductions may be granted, and shall follow the procedures under Subpart M of Part 831 of this title when applying the standards.

(2) If, under section 8707(d) of title 5, United States Code, an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8708 of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. An agency will make its determination on the waiver of collection of an overpayment of pay in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G.

Subpart F—Retired Employees

§ 870.601 Eligibility for life insurance.

(a) Subject to a positive election under paragraphs (c)(2), (c)(3), or (c)(4) of this section, the basic life insurance of an insured employee who is separated from service is continued or reinstated if he/she:

(1) Is entitled to retirement on immediate annuity under a retirement system for civilian employees of the Federal or District of Columbia Governments,

(2) Has been enrolled for basic insurance for the 5 years of service immediately preceding the date of retirement or the full period(s) of service during which he/she was entitled to be insured,

(3) Has met all requirements for an immediate annuity (including filing of application where necessary), whether or not final administrative action has been taken, and

(4) Has not exercised his/her right to convert to an individual life insurance policy under § 870.501(e).

(b) An employee who meets the requirements under paragraphs (a) or (h) of this section for continuation or reinstatement of life insurance shall execute a written election on a form furnished by OPM at the time entitlement to continuation or reinstatement of the insurance arises. To be considered valid, the election form must be received in OPM before final adjudication of the employee's application for annuity or supplemental annuity. In the absence of a valid election, the insured shall be deemed to have filed a valid election under paragraph (c)(2) of this section.

(c) An individual making an election under paragraph (b) of this section shall select one of the following options:

(1) No insurance during receipt of annuity, in which case the individual's insurance shall stop upon conversion to an individual policy as provided under § 870.501, or, if the individual does not so convert, at the end of the month in which the election is received in OPM,

(2) Continuation or reinstatement of life insurance coverage subject to annuity withholdings during retirement, and the amount of basic life insurance in force will be reduced by 2 percent a month effective at the beginning of the second calendar month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later, with a maximum reduction of 75 percent,

(3) Continuation or reinstatement of life insurance coverage subject to continuous annuity withholdings during retirement, and the amount of basic life insurance in force will be reduced by 1 percent a month effective at the beginning of the second calendar month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later, with a maximum reduction of 50 percent, or

(4) Continuation or reinstatement of basic life insurance subject to continuous annuity withholdings during retirement, and the amount of basic life insurance will not be reduced after age 65.

An insured individual may cancel at any time an election under paragraphs (c)(3) or (c)(4) of this section in which case the amount of basic life insurance will automatically revert, effective at the end of the month in which the request to cancel is received in OPM, to the amount that would have been in force had the individual originally elected coverage under paragraph (c)(2) of this section, unless a waiver of insurance coverage is filed by the insured, in which case the coverage stops without a 31-day extension of coverage or right or conversion, effective at the end of the month in which the waiver is received in OPM.

(d) An immediate annuity is one which begins to accrue no later than 1 month after the date the insurance would otherwise stop.

(e) If the annuity of an insured retired employee is terminated under any applicable law or regulation, his/her basic life insurance as a retired employee stops on the date of termination of annuity.

(f)(1) If an insured retired employee is appointed to a position in which he/she is not excluded from insurance by law or regulation, the amount of his/her basic life insurance as a retired employee, and any annuity withholdings applicable thereto, is suspended on the day preceding the first day in a pay status under the appointment unless he/she waives all insurance coverage. The benefit payable upon the death of a reemployed annuitant who has basic insurance in force as an employee shall not be less than the benefit which would have been payable had the annuitant not been reemployed.

(2) Except as provided in paragraph (g) of this section, the basic insurance acquired as an employee stops, with no 31-day extension of coverage or right of conversion, on the date reemployment terminates and any suspended basic life insurance, and any annuity withholdings applicable thereto, is reinstated on the day following termination of the reemployment.

(g) Subject to a positive election under paragraphs (c)(2), (c)(3), or (c)(4) of this section, basic life insurance acquired during reemployment may be continued after termination of the reemployment if:

(1) The retired employee qualifies for a supplemental annuity or acquires a new retirement right,

(2) He/she has had basic insurance as an employee for at least 5 years of service immediately preceding separation from reemployment or for the full period(s) during which such coverage was available to him/her, whichever is less, and

(3) He/she does not convert to nongroup insurance when his/her basic insurance as an employee would otherwise terminate. If the basic life insurance acquired during reemployment is so continued, any suspended basic life insurance stops with no 31-day extension of coverage or right of conversion.

§ 870.602 Amount of life insurance.

The amount of a retired employee's basic life insurance is his/her BIA at the date insurance would otherwise have stopped because of his/her separation from service or completion of 12 months of nonpay status, less the reductions, if any, applicable under § 870.601(c). For the purpose of the payment of benefits upon the death of an insured individual under age 45, effective October 1, 1981, the BIA shall be multiplied by the age factor under § 870.301(b) corresponding to the insured's age on the date of death, provided that his/her basic insurance as an employee terminated on or after October 10, 1980.

Subpart G—Employees' Compensation

§ 870.701 Eligibility for life insurance.

(a) Subject to a positive election under paragraphs (c)(2), (c)(3), or (c)(4) of this section, the basic life insurance of an insured employee who is separated from the service or completes 12 months of nonpay status, and who is receiving compensation for work injury under subchapter I of chapter 81 of title 5, United States Code, and is held by the Department of Labor to be unable to return to duty, shall be continued or reinstated if he/she:

(1) Has been insured for the five years of service immediately preceding the date on which basic insurance would otherwise stop, or for the full period(s) of service during which he/she was entitled to be insured, and

(2) Has not, on or after May 28, 1956, exercised the right of conversion described in § 870.501(e).

(b) An employee who meets the requirements under paragraph (a) of this section for continuation or reinstatement of life insurance shall execute a written election on a form furnished by OPM at the time entitlement to continuation or reinstatement of the insurance arises. To be considered valid, the election form must be received in OPM before final OPM action on the employee's request to continue life insurance during receipt of compensation. In the absence of a valid election, the insured shall be deemed to have filed a valid election under paragraph (c)(2) of this section.

(c) An individual making an election under paragraph (b) of this section shall select one of the following options:

(1) No insurance during receipt of compensation payments, in which case the individual's insurance coverage shall stop upon conversion to an individual policy as provided under § 870.501(e) or, if the individual does not so convert, at the end of the month in which the election is received in OPM or the employing office,

(2) Continuation or reinstatement of life insurance coverage subject to withholdings from compensation, and the amount of basic life insurance in force will be reduced by 2 percent a month effective at the beginning of the second calendar month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later, with a maximum reduction of 75 percent.

(3) Continuation or reinstatement of basic life insurance coverage subject to continuous withholdings from compensation payments, and the amount of basic life insurance in force will be reduced by 1 percent a month, effective at the beginning of the second calendar month after the date the insurance would otherwise have stopped or the date of the insured's 65th birthday, whichever is later, with a maximum reduction of 50 percent, or

(4) Continuation or reinstatement of basic life insurance coverage subject to continuous withholdings from compensation payments, and the amount of basic life insurance will not be reduced after age 65. An individual may cancel at any time an election under paragraphs (c)(3) or (c)(4) of this section, in which case the amount of basic life insurance will automatically revert, effective at the end of the month in which the request to cancel is received in OPM, to the amount that would have been in force had the individual originally elected continued coverage under paragraph (c)(2) of this section, unless a waiver of insurance coverage is filed by the insured, in which case the insurance stops without a 31-day extension of coverage or right of conversion, effective at the end of the month in which the waiver is received in OPM.

(d) Basic life insurance which is continued as provided under this section during receipt of compensation shall stop with no 31-day extension of coverage and no right of conversion, upon termination of the employee's compensation under subchapter I of chapter 81 of title 5, United States Code, or upon a finding by the Department of Labor that the insured is able to return to duty.

§ 870.702 Amount of life insurance.

The amount of basic life insurance of an employee whose insurance is continued while he/she is receiving compensation for work injury under subchapter I of chapter 81 of title 5, United States Code and is held by the Department of Labor to be unable to return to duty is his/her BIA at the date insurance would otherwise have stopped because of his/her separation from service or completion of 12 months of nonpay status, less the reductions, if any, applicable under § 870.701(c). For the purpose of the payment of benefits upon the death of an insured individual under age 45, effective October 1, 1981, the BIA shall be multiplied by the age factor under § 870.301(b) corresponding to the insured's age on the date of death, provided that his/her basic insurance as an employee terminated on or after October 10, 1980.

(5 U.S.C. 8716)

[FR Doc. 80-37781 Filed 12-4-80; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary and General Officers of the Department to specifically provide authority to purchase unlicensed veterinary biological products on the open market, test same, and disseminate the results of such tests as provided in Section 101(d) of the Act of September 21, 1944.

(7 U.S.C. 430)

EFFECTIVE DATE: December 5, 1980.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202–447–5335 or 301–436–6466).

SUPPLEMENTARY INFORMATION: The delegations of authority by the Secretary and General Officers are being amended to delegate to the Assistant Secretary for Marketing and Transportation Services and the Administrator, Animal and Plant Health Inspection Service, the authority to purchase in the open market, from applicable appropriations, samples of all tuberculin, serums, antitoxins, or analogous products of foreign or domestic manufacture which are sold in the United States, for the detection, prevention, treatment, or cure of diseases of domestic animals, test the same and disseminate the results of said tests in such manner deemed best. It is necessary to provide this delegation of authority to appropriate officers consistent with, and with due regard to, the continuing responsibility for the proper discharge of certain of the functions assigned APHIS. Delegation of this authority will provide for acquisition and dissemination of information regarding the quality of biological products available in U.S. markets. It will serve to encourage those who produce and distribute biological products which are pure, safe, potent, and efficacious.

This authority first appeared in the Agricultural Appropriation Act for fiscal year 1907, when it was inserted to discourage the production and marketing of animal biologics which were worthless, contaminated, dangerous, or harmful. After the enactment of the Virus-Serum-Toxin Act of March 4, 1913, there was less need for the retention of this language, but it was continued from year-to-year and later included in the 1944 Organic Act, since the Virus-Serum-Toxin Act applies only to transactions in interstate or foreign commerce. It has always been construed that the authority to purchase and test samples was delegated as one of the general authorities delegated by the Secretary in 7 CFR 2.7.

Provision for the procurement of these products in the open market for testing purposes is adequately covered in 41 CFR 4–4.5095. It is the authority to disseminate test results that has been the subject of concern, and accordingly, to avoid any possible questions as to the exercise of such authority, the authority vested in the Secretary by the Congress is herein specifically delegated. The Department believes this delegation conforms to the mission of APHIS, and that this specific delegation will enable the Agency to serve the public more efficiently.

This rule relates to internal agency management and, therefore, pursuant to 5 U.S.C. 553 it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after its publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12044, Improving Government Regulations, and, thus, does not require the preparation of a regulatory impact analysis. Accordingly, 7 CFR Part 2 is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries and the Director of Economics, Policy Analysis and Budget

1. Section 2.17 is amended by adding a new paragraph (b)(33) to read as follows:

§ 2.17 Delegation of authority to the Assistant Secretary for Marketing and Transportatiсn Services.

* * * * *

(b) * * *

(33) Section 101(d), Organic Act of 1944 (7 U.S.C. 430).

* * * * *

Subpart F—Delegations of authority by the Assistant Secretary for Marketing and Transportation Services

2. Section 2.51 is amended by adding a new paragraph (a)(34) to read as follows:

§ 2.51 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(34) Section 101(d), Organic Act of 1944 (7 U.S.C. 430).

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subpart C:

Dated: December 1, 1980.

Bob Bergland,

Secretary of Agriculture.

For Subpart F:

Dated: December 1, 1980.

Jerry C. Hill,

Deputy Assistant Secretary for Marketing and Transportation Services.

[FR Doc. 80-37763 Filed 12-4-80; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Stabilization and Conservation Service

7 CFR Part 725

1981 National Marketing Quota for Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule, is the announcement by the Secretary of Agriculture of a number of determinations with respect to the 1981 crop of flue-cured tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended. Along with other determinations, the Secretary has declared that the 1981 marketing quota for flue-cured tobacco shall be 1,013 million pounds, 7.5 percent below last year's quota. The Secretary is required by statute to announce the 1981 marketing quota by December 1, 1980. The Secretary has also determined that the national acreage allotment for flue-cured tobacco shall be 546,386 acres.

EFFECTIVE DATE: December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Program Specialist, Price Support and Loan Division, ASCS, Room 3754, South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–6733. 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 Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established to implement Executive Order 12044 and has been classified "significant." In compliance with Secretary's Memorandum No. 1955 and "Improving USDA Regulations" (43 FR 50988) initiation of review of these and related regulations contained in 7 CFR 725.2 for need, currency, clarity, and effectiveness is planned for the period August–November 1981.

The title and number of the Federal Assistance Program that this Final Rule applies to is: Title—Commodity Loan and Purchases; Number—10.051. This action will not have 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.

The regulations at 7 CFR 725.2 are issued in accordance with the Agricultural Adjustment Act of 1938, as amended, (hereafter referred to as the "Act") in order to announce for the 1981 marketing year for flue-cured tobacco the following:

1. The amount of the reserve supply level.
2. The amount of the total supply.
3. The amount of the national marketing quota.
4. The national average yield goal.
5. The national acreage allotment.
6. The national acreage reserve.

A. For establishing acreage allotments for new farms.

B. For making corrections and adjusting inequities in old farms.

7. The national acreage factor.
8. The national yield factor.

Marketing quotas on an acreage-poundage basis were proclaimed for flue-cured tobacco for the 1980–81, 1981–82, and 1982–83 marketing years (44 FR 68804). Flue-cured tobacco farmers approved marketing quotas on an acreage-poundage basis for the 1980–81, 1981–82, and 1982–83 marketing years (45 FR 40096).

The determinations by the Secretary contained in 7 CFR 725.2 have been made on the basis of the latest available statistics of the Federal Government, and after due consideration of data, views, and recommendations received from flue-cured tobacco producers and others pursuant to a Notice of Proposed Rulemaking (45 FR 64594) which was published in accordance with the provisions of 5 U.S.C. 553 and Executive Order 12044.

Discussion of Comments

During the comment period, 12 written responses were received from farmers, members of the trade including associations, and farm groups. Nine respondents advocated no change in the present quota; two were in favor of a small reduction of the quota; and one gave no specific recommendation. The major thrust of these responses centered around a need for adequate supplies to maintain markets and for a high production level to maintain farm income.

Six meetings were held in the producing areas to give farmers and others the opportunity to express their views verbally. With respect to the quota, most respondents favored no reduction in the quota established for the previous marketing year, again noting that adequate supplies were needed to maintain markets.

However, the total supply of flue-cured tobacco is substantially in excess of the reserve supply level. Therefore, in keeping with the Secretary's obligations to make an orderly reduction of supplies toward the reserve supply level, a marketing quota of 1,013 million pounds is hereby determined and announced for the 1981–82 marketing year, 7.5 percent below last year's quota.

Section 317(a)(1) of the Act provides, in part, that for flue-cured tobacco, the "national marketing quota" for a marketing year is the amount of flue-cured tobacco produced in the United States which the Secretary of Agriculture estimates will be utilized during the marketing year in the United States and will be exported during the marketing year, adjusted upward or downward in such amount as the Secretary determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. The Act further provides that any such downward adjustment shall not exceed 15 per centum of such estimated utilization and exports.

The "reserve supply level" is defined in Section 301(b)(14)(B) of the Act as the normal supply plus 5 percent thereof, to assure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty.

The "normal supply" is defined in Section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports as an allowance for normal carry-over.

A "normal year's domestic consumption" is defined in Section 301(b)(11)(B) of the Act as the yearly average quantity of tobacco produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in Section 301(b)(12) of the Act as the yearly average quantity of tobacco produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The yearly average domestic consumption of flue-cured tobacco during the 10 marketing years preceding the 1980–81 marketing year was 638 million pounds, and the yearly average exports during such period amounted to 537 million pounds. Exports have fluctuated in relatively narrow bands with no predominant trend while domestic use has trended downward. Accordingly, a normal year's exports equals the 10 year average while a normal year's domestic consumption has been set at 580 million pounds. These normals result in a reserve supply level for flue-cured tobacco of 2,605 million pounds.

"Total supply" is defined in Section 301(b)(16)(B) of the Act as the carryover at the beginning of the marketing year (July 1) plus the estimated production in the United States during the calendar year in which the marketing year begins.

The carryover of flue-cured tobacco in the inventories of manufacturers and dealers (including Commodity Credit Corporation (CCC) loan stocks) on July 1, 1980, amounted to 1,965 million pounds, farm sales weight.

The 1980 crop marketings of flue-cured tobacco are currently estimated at 1,095 million pounds. The sum of the carryover of flue-cured tobacco plus the 1980 crop marketings totals 3,060 million pounds and represents the total supply of flue-cured tobacco for the 1980–81 marketing year. This amount exceeds the proposed reserve supply level by 455 million pounds.

It is estimated that 560 million pounds of flue-cured tobacco will be utilized in the United States during the 1981–82 marketing year and 500 million pounds will be exported. Because the total supply is substantially in excess of the reserve supply level, it is deemed desirable to make a downward adjustment of 74 million pounds in order to determine the 1981 flue-cured tobacco quota. Accordingly, the national marketing quota for flue-cured tobacco for the marketing year beginning July 1,

1981, is determined to be 986 million pounds.

The "national average yield goal" is defined in Section 317(a)(2) of the Act as the yield per acre which on a national average basis the Secretary determines will improve or insure the usability of the tobacco and increase the net return per pound to the growers. In making this determination, the Sescretary is required to give consideration to such Federal-State production data as is deemed relevant. The national average yield goal has been determined to be 1,854 pounds per acre. It has been determined that this yield will improve or insure the usability of flue-cured tobacco and increase the net return per pound to the growers. In making his determination, the Secretary considered research data of the Science and Education Administration, formerly Agricultural Research Service of the Department, and one of the land-grant colleges in the flue-cured tobacco producing area.

The community average yields have been determined for flue-cured tobacco and were published in the Federal Register, (30 FR 6207, 9875, 14487).

In accordance with Section 317(a)(3) of the Act, the national acreage allotment for the 1981 crop of flue-cured tobacco is determined to be 531,823.09 acres, which is the result of dividing the national marketing quota by the national average yield goal.

In accordance with Section 317(e) of the Act, the Secretary is authorized to establish a national reserve, from the national acreage allotment, in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting inequities and establishing allotments for new farms. The Secretary has determined that a national reserve for the 1981 crop of flue-cured tobacco of 300 acres in adequate for these purposes.

It has been determined that types 11, 12, 13, and 14 constitute one kind of tobacco for the 1980–81, 1981–82, and 1982–83 marketing years. It has been determined also that no substantial difference exists in the usage or market outlets for any one or more of the types of flue-cured tobacco (30 FR 6144). Therefore, no action is being taken in accordance with Section 313(i) of the Act for the 1981–82 marketing year.

Since farmers are now making their plans for 1981 production of flue-cured tobacco and need to know immediately the acreage allotments and marketing quota for their farms for the 1981–82 marketing year, it is hereby found that compliance with the 30-day effective date requirements in 5 U.S.C. 553 is impossible and contrary to the public interest. Therefore, this rule shall become effective December 1, 1980.

Final Rule

Accordingly, the regulations at 7 CFR Part 725 are amended, effective for the 1981 crop of flue-cured tobacco, by revising § 725.2 and the centerhead which precedes it to read as set forth below. The material previously appearing in this section under centerhead "DETERMINATIONS AND ANNOUNCEMENTS 1980–81 MARKETING YEAR" remains in full force and effect as to the crop to which it was applicable.

Determinations and Announcements 1981–82 Marketing Year

§ 725.2 Flue-cured tobacco.

For flue-cured tobacco for the marketing year beginning July 1, 1981:

(a) *Reserve supply level.* The reserve supply level is determined and announced to be 2,605 million pounds based upon a normal year's domestic consumption of 580 million pounds and a normal year's exports of 537 million pounds.

(b) *National marketing quota.* A national marketing quota on an acreage-poundage basis for the marketing year beginning July 1, 1981 is hereby determined and announced to be 1,013 million pounds. This quota is based on estimated utilization in the United States in such marketing year of 560 million pounds and estimated exports in such marketing year of 510 million pounds, with a 57 million pound downward adjustment in order to effect an orderly reduction of supplies toward the reserve supply level.

(c) *National average yield goal.* The national average yield goal is determined and announced to be 1,854 pounds. This goal is based on the yield per acre which, on a national average basis, will improve or insure the usability of flue-cured tobacco and increase the net return per pound to growers.

(d) *National acreage allotment.* The national acreage allotment on an acreage-poundage basis is determined and announced to be 546,386.19 acres. This allotment is determined by dividing the national marketing quota of 1,013 million pounds by the national average yield goal of 1,854 pounds.

(e) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms is determined and announced to be 200 acres.

(f) *National acreage factor.* The national acreage factor is determined and announced to be .925.

(g) *National yield factor.* The national yield factor is determined and announced to be .9307.

(Secs. 301, 313, 317, 375, 52 Stat. 38, 47, 66, as amended, 79 Stat. 66 (7 U.S.C. 1301, 1313, 1314c, 1375))

Signed at Washington, D.C., on December 1, 1980.

Bob Bergland,

Secretary of Agriculture.

[FR Doc. 80-37719 Filed 12-1-80; 4:37 pm]

BILLING CODE 3410-05-M

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7 CFR Part 729

1981 Peanut Program; Acreage Allotments and Poundage Quotas

AGENCY: Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

ACTION: Final determination.

SUMMARY: The purpose of this determination is to: (a) Establish and proclaim the 1981 national acreage allotment and apportion such allotment to the states; (b) establish and proclaim the 1981 national poundage quota; and (c) establish the date or period for holding the national referendum of peanut farmers for the crops of peanuts produced in the calendar years 1981, 1982, and 1983. The need for this determination is to satisfy the statutory requirements as provided for in the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as "the Act").

EFFECTIVE DATE: December 1, 1980.

ADDRESSES: Price Support and Loan Division, ASCS, USDA, 3741-South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, (ASCS), (202) 447–6733. The final impact analysis describing options considered in developing the proposed rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established to implement Executive Order 12044 and has been classified "significant."

In compliance with Secretary's Memorandum No. 1955 and the final report issued by the Secretary with respect to Executive Order 12044 and entitled "Improving USDA Regulations" (45 FR 50988), initiation of review of the regulations contained in 7 CFR 729.100

through 729.104 for need, currency, clarity and effectiveness, will be made within the next five years.

The title and number of the federal assistance program that this final rule applies to is: Title—Commodity Loans and Purchases; Number—10.051, 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.

A notice that the Secretary was preparing to make determinations with respect to the national acreage allotment and poundage quota was published in the **Federal Register** on October 7, 1980, (45 FR 66459). The comment period ended October 24.

A total of 30 comments were received. Twenty-six responses were received commenting on the national acreage allotment; of those, 18 respondents recommended a national acreage allotment of 1,614,000 acres, 8 respondents recommended an allotment above 1,614,000 acres, and 1 recommended unlimited acreage. One request was received to increase the Missouri State allotment and one recommended increasing both the allotment and poundage quotas for Valencia peanuts grown in New Mexico. Twenty-six comments were received concerning the poundage quota. Twenty-two recommended a national poundage quota of 1,516,000 tons or more. Four recommended reducing the quota to the 1981 crop statutory minimum of 1,440,000 tons. Seventeen comments were received on the period of marketing quota referendum. Seven respondents recommended the period proposed—December 8–11. Of the 10 recommendations for a different referendum period, 8 requests were received for December 8–12, and one each for December 1–5 and December 6–11.

One manufacturer has requested that the Department (1) revise proposed determinations to reflect revised supply-demand estimates, (2) give the public opportunity to comment on revised proposed determinations, and (3) extend comment period to November 14.

After consideration of the comments received, as well as the latest available data, which are set forth in the final rule, it was determined that the national poundage quota for the 1981 marketing year should be 1,440,000 tons, the minimum quota prescribed under Section 358(1) of the Act. Section 358(1) also specifies that "If the Secretary determines that the minimum national poundage quota for any marketing year is insufficient to meet total estimated requirements for domestic edible use and a reasonable carryover, the national poundage quota for the marketing year may be increased by the Secretary to the extent determined by the Secretary to be necessary to meet such requirements." It has been determined that no increase is needed since the minimum poundage quota is projected to be sufficient to meet such requirements. It has also been determined that the national acreage allotment for the 1981 crop of peanuts should be increased to 1,739,000 acres. The 125,000-acre increase in the acreage allotment should provide a supply adequate to meet potential export demand and to permit rebuilding of commercial stocks. The Secretary has determined that the increase in the acreage allotment is necessary in order to provide an adequate supply of peanuts to meet domestic use, exports, and provide a reasonable carryover. The Secretary has determined that the marketing quota referendum should be held during the referendum period December 8–11 inclusive, by mail ballot in order to comply with statutory requirements which provide that the referendum must be held by December 15. It was also determined to conduct the referendum on extra long staple cotton and peanuts in the same time period in order to minimize instructions to ASCS State and county offices. If marketing quotas are approved by two-thirds or more of the producers voting in the referendum, marketing quotas will be in effect for peanuts produced in the calendar years 1981, 1982, and 1983. The latest available statistics of the Federal Government have been used in making such determinations. It was also determined that another proposed rule would not be published to include revised data and that the comment period would not be extended. Such delay would not give the Department adequate time to make the announcement by the statutory deadline.

It is essential that these provisions be made effective as soon as possible since the proclamations of the national allotment and national poundage quota are required to be made by December 1, 1980, the statutory deadline. Accordingly, the Secretary has determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 and Executive Order 12044 is impracticable and contrary to the public interest. Therefore, this amendment to 7 CFR 729.100 through 729.104 shall become effective upon filing with the Director, Office of the Federal Register with respect to the 1981 crop of peanuts.

The material previously appearing in §§ 729.100 through 729.104 under centerhead "1980 Crop of Peanuts; Acreage Allotments and Poundage Quotas" remains in full force and effect as to the 1980 crop.

Final Determinations

Accordingly, 7 CFR 729.100 to 729.104 and the title of the subpart are amended to read as follows:

Subpart—1981 Peanut Program; Acreage Allotments and Poundage Quotas

Secs.

729.100 National poundage quota for the 1981 peanut marketing year
729.101 National acreage allotment for the 1981 crop of peanuts
729.102 Reserved
729.103 Apportionment of national acreage allotment to the States
729.104 Marketing quota referendum for peanuts produced in calendar years 1981, 1982, and 1983.

Authority: Secs. 301, 358, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 52 Stat. 66, as amended (7 U.S.C. 1301, 1358, 1375).

§ 729.100 National poundage quota for the 1981 peanut marketing year.

(a) The national poundage quota for the 1981 peanut marketing year is hereby determined and proclaimed to the 1,440,000 tons, the minimum quota prescribed under Section 358(1) of the Agricultural Adjustment Act of 1938, as amended, (referred to in the subpart as "the Act").

(b) The Act specifies that if the Secretary determines that the minimum national poundage quota for any marketing year is insufficient to meet total estimated requirements for domestic edible use and a reasonable carryover, the quota may be increased to the extent necessary to meet such requirements.

(c) It has been determined that the minimum national poundage quota for 1981 will be sufficient to meet such requirements based on the following data:

1981 Crop National Poundage Quota

[Projected supply and requirements for quota peanuts in 1981–82 marketing year, most likely U.S. weather]

Item	1,000/ tons
Quota	1,440
Effective quota	1,592
Projected supply:	
Carryin	70
Quota marketings	1,512
Total supply	1,582
Projected requirements:	
Domestic edible, seed and crushing residual	1,255
Carryover (15 percent of requirements)	285
Total	1,540
Surplus to statutory requirement	42

§ 729.101 National acreage allotment for the 1981 crop of peanuts.

(a) The national acreage allotment for the 1981 crop of peanuts is hereby determined and proclaimed to be 1,739,000 acres, about 8 percent above the minimum allotment.

(b) Subject to the prescribed minimum, the Department is required under the Act to consider projected domestic use, exports, and a reasonable carryover in determining the national acreage allotment. It has been determined that a national allotment of 1,739,000 acres should be sufficient to meet such requirements for the 1981 crop of peanuts based on the following data:

(1) *Production potential.* Historically, actual national acreage allotments have ranged from 1,000 to 4,000 acres above the minimum national acreage allotment prescribed by statute each year from 1957 through 1977 because of short supply determinations, mainly applicable to New Mexico. In 1978 and 1979, short supply determinations were not made and the actual national acreage allotment remained at the new statutory minimum of 1,614,000 acres. The 1980-crop national acreage allotment was established at 1,614,000 acres. For the 1981 crop, each peanut producing State will have about 8 percent more acreage allotted than that in 1980.

(i) While the allotted acreage has been about the same each year since 1957, planted and harvested acres and average yields produced from those acres all have resulted in upward trends in recent years except under poor weather conditions. From 1974 through 1980, planted acres have ranged from an estimated low of 1,390,000 in 1980 to a high of 1,549,700 in 1979 and harvested acres from an estimated low of 1,390,100 in 1980 to a high of 1,524,500 in 1979. Average yields in the same period ranged from an estimated 1,652 pounds in 1980 to an estimated 2,639 pounds in 1978. Production ranged from an estimated 1,148,530 tons in 1980 to an estimated 1,994,312 tons in 1978.

Production in 1,000 Tons

Crop	
1975	1,929
1976	1,875
1977	1,863
1978	1,994
1979	1,990
1980	1,149

(ii) During the 1973-1980 period, only about 94 to 96 percent of the total acreage allotment was planted. This pattern of underutilization is expected to continue into 1981, with 1,652,000 planted acres and 1,620,009 harvested acres seen as the practicable potential for the year. Using the projected yield range of 2,300 to 2,550 pounds, 1981 crop production potential is estimated to range from 1,857,000 to 2,072,000 tons.

(2) *Projected requirements, 1981 marketing year.* (i) Based on most likely U.S. weather and a quota loan level of $455 per ton, requirements for quota peanuts for domestic edible and related use and a reasonable carryover are estimated to be 1,443,000 tons (see § 729.100) out of total estimated supply of 1,582,000 tons for the 1981 marketing year.

(ii) Requirements for peanuts for export are estimated at 400,000 tons. However, availability of additional peanuts for export will depend upon response of peanut growers to market demand. Quota peanuts which are surplus to domestic requirements will be available for export if demand exceeds the supply of additional peanuts.

(3) *Projected supply of and demand for peanuts under most likely U.S. weather conditions, 1981 marketing year.*

Item	1,000 tons
Supply:	
Carryin	75
Marketings	1,925
Imports	1
Total	2,001
Requirements:	
Domestic edible, seed and commercial crushing	1,205
Exports	400
Surplus-CCC diversion	81
Total	1,686
Carryout	315

§ 729.102 [Reserved]

§ 729.103 Apportionment of national acreage allotment to the States.

The 1981-crop national acreage allotment of 1,739,000 is apportioned to the States in accordance with Section 358(c)(1) of the Act as follows:

State Acreage Allotment

State	Acres
Alabama	232,970
Arizona	820
Arkansas	4,631
California	1,002
Florida	59,777
Georgia	571,471
Louisiana	2,096
Mississippi	8,072
Missouri	266
New Mexico	10,545
North Carolina	180,871
Oklahoma	149,000
South Carolina	14,967
Tennessee	3,762

State Acreage Allotment—Continued

State	Acres
Texas	385,794
Virginia	112,956
Total	1,739,000

§ 729.104 Marketing quota referendum for peanuts produced in calendar years 1981, 1982 and 1983.

The marketing quota referendum for peanuts produced in calendar years 1981, 1982, and 1983 shall be held during the referendum period December 8–11, 1980, inclusive, by mail ballot in accordance with Part 717 of this chapter. It two-thirds or more of the peanut farmers voting in the referendum favor marketing quotas, marketing quotas will be in effect for peanuts produced in calendar years 1981, 1982 and 1983.

Signed at Washington, D.C., on December 1, 1980.

Bob Bergland,

Secretary, Department of Agriculture.

[FR Doc. 80-37718 Filed 12-1-80; 4:37 pm]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 282; Lemon Reg. 281, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period December 7–13, 1980, and increases the quantity of such lemons that may be so shipped during the period November 30–December 6. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective December 7, 1980, and the amendment is effective for the period November 30–December 6, 1980.

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

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are 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 available information. It is hereby found that this action will tend to effectuate the declared poicy of the act.

This action is consistent with the marketing policy for 1980–81 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 December 2, 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 weeks. The committee reports the demand for lemons has improved.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions 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), and the amendment relieves restrictions on the handling of lemons. 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 times.

1. Section 910.582 is added as follows:

§ 910.582 Lemon Regulation 282.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period December 7, 1980, through December 13, 1980, is established at 235,000 cartons.

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

2. Paragraph (a) of § 910.581 Lemon Regulation 281 (45 FR 79004) is amended to read as follows:

§ 910.581 Lemon Regulation 281.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period November 30, 1980, through December 6, 1980, is established at 235,000 cartons.

* * * * *

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

Dated: December 3, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-38067 Filed 12-4-80; 11:30 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

Adjustments to Lower and Upper Tier Crude Oil Price Ceilings To Reflect Impact of Inflation

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA), of the Department of Energy (DOE) hereby issues Crude Oil Price Schedule No. 21 which provides for monthly increases in the ceiling prices for lower tier and upper tier crude oil to take into account the impact of inflation. This action will result in estimated first sale prices for the months of December 1980 and January and February 1981 of $6.73, $6.78, and $6.83 per barrel (lower tier) and $15.02, $15.14 and $15.26 per barrel (upper tier), respectively.

EFFECTIVE DATE: December 1, 1980.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street NW., Room B110, Washington, D.C. 20461, 202–653–4055

Charles P. Little (Crude Oil Pricing Branch), Economic Regulatory Administration, 2000 M Street NW., Room 6128–P, Washington, D.C. 20461, 202–653–3459

Ben McRae (Office of General Counsel), Department of Energy, 1000 Indepedence Avenue SW., Room 6A 127, Washington, D.C. 20585, 202–252–6739.

SUPPLEMENTARY INFORMATION:

A. *Introduction*
B. *Crude Oil Price Schedule No. 21*

A. Introduction

On August 29, 1980, we issued Crude Oil Price Schedule No. 20 (45 FR 59137, September 8, 1980), which continued the crude oil pricing policy of permitting the prices for lower tier and upper tier crude oil to increase to adjust for the impact of inflation. This policy will continue during the period of December 1980 through September 1981 as we gradually decontrol domestic crude oil. Accordingly, we are issuing Crude Oil Price Schedule No. 21 which provides for increases in the ceiling prices for lower tier and upper tier crude oil during the months of December 1980 and January and February 1981 to take into account the impact of inflation.

B. Crude Oil Price Schedule No. 21

Under Crude Oil Price Schedule No. 21, the November 1980 lower tier ceiling price (the May 15, 1973 posted price plus $2.99 per barrel, resulting in an average first sale price of approximately $6.68 per barrel), and the November 1980 upper tier ceiling price (the September 30, 1975 posted price plus $2,23, resulting in an average first sale price of approximately $14.90 per barrel), are adjusted for inflation for December 1980 and January and February 1981, based on the first revision of the GNP deflator published on November 19, 1980, which reflects an annual rate of inflation of 9.8 percent.

1. *Lower tier ceiling prices.* Adjustments to ceiling prices for lower tier crude oil and the approximate average first sale prices pursuant to those ceiling prices in December 1980 and January and February 1981 are determined pursuant to the following methodology:

A. ERA has computed a monthly adjustment factor of .00782 which when applied over a twelve-month period yields an effective annual rate of adjustment of 9.8 percent.

B. December 1980 adjustment—($6.68) (.00782) per barrel = $.052 per barrel rounded to $.05 per barrel.

C. January 1981 adjustment—($6.68 + .05) (.00782) per barrel = $.053 per barrel rounded to $.05 per barrel.

D. February 1981 adjustment—($6.68 + .05 + .05) (.00782) per barrel = $.053 per barrel rounded to $.05 per barrel.

Based upon the monthly adjustments computed above, estimated average lower tier ceiling prices for the months of December 1980 and January and February 1981 are computed as follows:

December 1980—$6.68 + $.05 = $6.73
January 1981—$6.73 + $.05 = $6.78
February 1981—$6.78 + $.05 = $6.83

Using an average highest posted field price on May 15, 1973, of $3.69 per barrel and the monthly adjustments as computed above, lower tier prices for the next 3 months have been determined as follows:

Month	Ceiling price	Price [1]
December 1980	May 15, 1973, highest posted field price plus $3.04.	$6.73
January 1981	May 15, 1973, highest posted field price plus $3.09.	6.78
February 1981	May 15, 1973, highest posted field price plus $3.14.	6.83

[1] Estimated average first sale price.

Upper Tier Ceiling Prices

Adjustments to ceiling prices for upper tier crude oil and the approximate average first sale prices pursuant to those ceiling prices in December 1980 and January and February 1981 are determined pursuant to the following methodology:

A. Adjustment factor (explained above) = .00782.

B. December 1980 adjustment—($14.90) (.00782) per barrel = $.117 per barrel rounded to $.12 per barrel.

C. January 1981 adjustment—($14.90 + .12) (.00782) per barrel = $.118 per barrel rounded to $.12 per barrel.

D. February 1981 adjustment—($14.90 + .12 + .12) (.00782) per barrel = $.118 per barrel rounded to $.12 per barrel.

Based upon the monthly adjustments computed above, estimated average upper tier ceiling prices for the months of December 1980, and January and February 1981, are computed as follows:

December 1980—$14.90 + $.12 = $15.02
January 1981—$15.02 + $.12 = $15.14
February 1981—$15.14 + $.12 = $15.26

Using an average highest posted field price on September 30, 1975, of $12.67 per barrel and the monthly adjustments as computed above, upper tier prices for the next 3 months have been determined as follows:

Month	Ceiling price	Price [1]
December 1980	Sept. 30, 1975, highest posted field price plus $2.35.	$15.02
January 1981	Sept. 30, 1975, highest posted field price plus $2.47.	15.14
February 1981	Sept. 30, 1975, highest posted field price plus $2.59.	15.26

[1] Estimated average first sale price.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159 as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective December 1, 1980.

Issued in Washington, D.C., November 25, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

Section 212.77 is amended in the Appendix to add Schedule No. 21 of Monthly Price Adjustments, as follows:

§ 212.77 Adjustments to ceiling prices.

* * * * *

Appendix

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Schedule No. 21 of Monthly Price Adjustments

[Effective December 1, 1980]

Month	Lower tier May 15, 1973, posted price [1] (plus)	Upper tier Sept. 30, 1975, posted price [2] (plus)
1976:		
February	1.35	−1.32
March	1.38	−1.25
April	1.41	−1.18
May	1.45	−1.11
June	1.48	−1.05
July	1.48	−1.05
August	1.48	−1.05
September	1.48	−1.05
October	1.48	−1.05
November	1.48	−1.05
December	1.48	−1.05
1977:		
January	1.48	−1.25
February	1.48	−1.25
March	1.48	−1.70
April	1.48	−1.70
May	1.48	−1.70
June	1.48	−1.70
July	1.48	−1.70
August	1.48	−1.70
September	1.51	−1.44
October	1.54	−1.18
November	1.57	−.92
December	1.59	−.87
1978:		
January	1.61	−.82
February	1.63	−.77
March	1.66	−.71
April	1.69	−.65
May	1.72	−.59
June	1.75	−.52
July	1.78	−.45
August	1.81	−.38
September	1.86	−.28
October	1.91	−.17
November	1.96	−.06
December	1.99	.01
1979:		
January	2.02	.08
February	2.05	.15
March	2.09	.23
April	2.13	.31
May	2.17	.39
June	2.21	.48
July	2.25	.57
August	2.29	.66
September	2.33	.76
October	2.37	.86
November	2.41	.96
December	2.45	1.05
1980:		
January	2.49	1.14
February	2.53	1.23
March	2.57	1.33
April	2.61	1.43
May	2.66	1.53
June	2.71	1.64
July	2.76	1.75
August	2.81	1.86

Schedule No. 21 of Monthly Price Adjustments—Continued

[Effective December 1, 1980]

Month	Lower tier May 15, 1973, posted price [1] (plus)	Upper tier Sept. 30, 1975, posted price [2] (plus)
September	2.87	1.98
October	2.93	2.10
November	2.99	2.23
December	3.04	2.35
1981:		
January	3.09	2.47
February	3.14	2.59

[1] The price referred to in 10 CFR 212.73(b)(1) or in 212.73(c)(1), 212.73(c)(3), and 212.73(c)(4).
[2] The price referred to in 10 CFR 212.74(b)(1).

This schedule of monthly price adjustments was issued by the Economic Regulatory Administration on November 25, 1980, pursuant to 10 CFR 212.77. It restates without change the lower and upper tier price ceilings applicable to crude oil produced and sold in the months of February 1976 through November 1980, as determined under 10 CFR 212.73, 212.74, and 212.77. Both lower tier and upper tier ceiling prices, which were increased under Schedule No. 20 effective September 1, 1980, are further increased as indicated in this schedule, effective December 1, 1980.

This schedule is effective only through February 28, 1981.

[FR Doc. 80-37748 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

[Rev. 3 Amdt. 15]

Servicing of Business Loans by Lenders

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA policy is to encourage the continued servicing of SBA loans by the private lender to the fullest extent possible, both before and after purchase of the loan by SBA. The regulations have been at variance with this policy. This amendment changes the regulation so that the lender, with SBA's written consent, may continue to service the SBA loan until SBA makes a written request for the transfer of loan servicing to SBA.

EFFECTIVE DATE: December 5, 1980.

FOR FURTHER INFORMATION CONTACT: Timothy F. O'Leary, Deputy Director, Office of Portfolio Management, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, (202) 653-6429.

SUPPLEMENTARY INFORMATION: On December 21, 1979, SBA published in the Federal Register a notice of proposed rulemaking (44 FR 75655) to amend Part 122, relating to the servicing of business loans by lenders. A typographical error appeared in the notice listing the amended section as "122.10" but the introductory language accurately referred to "122.20." No comments were received. However, SBA believes one clarifying change in the regulation may be appropriate. Thus, after the word "completes" an explanatory parenthesis defines completion.

Pursuant to the authority contained in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, § 122.20(d) of Part 122 is amended to read as follows:

§ 122.20 Loan administration.

* * * * *

(d) When SBA completes (*i.e.* perfects paperwork necessary to process disbursement) the purchase of its share of a guaranteed loan the financial institution shall assign the note and the other loan instruments to SBA and loan servicing shall become the responsibility of SBA; *Provided, however,* That with SBA's written consent the financial institution may continue to service the loan and be the holder of the note and the other loan instruments until SBA makes a written request for the transfer of loan servicing to SBA; the financial institution shall thereupon assign and deliver to SBA all loan instruments immediately after the receipt of such a transfer request from SBA.

(Catalog of Federal Domestic Assistance Program No. 59.012, Small Business Loans)

Dated: November 25, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-37826 Filed 12-4-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 376 and 379

Export Licensing Requirements for Computer Software; Interim Rule

AGENCY: Office of Export Administration, International Trade Administration, Department of Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Export Administration Act of 1979 ("the Act") provides for the restriction of exports of goods and "technology" (including computer software) when necessary to support U.S. national security and foreign policy objectives. This rule clarifies the Department's position on the export of computer software by amending the Export Administration Regulations to require the submission of specific technical information in support of applications for licenses to export computer software either coupled with the export of digital computer hardware or proposed for export independent of hardware. Further, applications for the export of digital computer hardware to Country Groups P, Q, W, and Y must now describe the software that will be used with the hardware.

DATES: This rule is effective December 5, 1980. Comments must be received by February 3, 1981.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Room 1617M, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-5247 or 377-4811).

SUPPLEMENTARY INFORMATION:

Regulatory Revisions

Section 376.10(a) of the Export Administration Regulations outlines the requirements for filing of export license applications covering the export of digital electronic computers and related equipment to destinations in Country Groups P, Q, W, and Y. This announcement revises the provisions of § 376.10(a) by establishing requirements for the furnishing of specific technical information describing computer software proposed for export to destinations in Country Groups P, Q, W, and Y and subject to validated licensing requirements as technical data under the provisions of Part 379 of the Export Administration Regulations. Further, exporters are now required to describe software that will be used with digital computer hardware intended for export to Country Groups P, Q, W, and Y. The information to be furnished is for use by Office of Export Administration technicians in performing licensing assessments. This revision relates to national security controls imposed under the authority in Section 5 of the Export Administration Act of 1979.

Rulemaking Requirements

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 et seq.) ("the Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and International Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations."

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations.

The period for submission of comments will close February 3, 1981. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the close of the comment period will be considered if possible, their consideration cannot be assured. Public comments which are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received they must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3102, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications.

may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regulations*. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Accordingly, the Export Administration Regulations (15 CFR 376.10, 379.4(b)(1) and 379.5) are revised as follows:

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

a. A new § 376.10(a)(1)(vii) is added as follows:

§ 376.10 Electronic computers and related equipment.

* * * * *

(a) * * *

(1) * * *

(vii) A description of all computer softwear (whether under validated or general license) that will be exported for use with the equipment including:

(*a*) Identification of each standard software package proposed for export, by name or other description, followed by a detailed functional description of the use of each software program.

(*b*) Means by which each software program identified by (a), above, is intended to be conveyed, *i.e.*, source or object code, supporting manuals, or other material that is intended to convey information related to such programs, with a description of the scope and content of each form.

(*c*) Information required by (a) and (b), above, as relates to non-standard, or customized software, intended for export.

(*d*) An explanation of why software proposed for export in other than object form is required.

(*e*) A description of the scope of training of persons receiving the software and/or the scope of the software maintenance that is proposed, as related to software programs identified above, or independent of actual software products intended for export.

(*f*) A statement as to whether any software intended for export has been previously exported in the same form. Differences in previously exported software, *e.g.*, source and object form, supporting material, and scope or character of training, should be explained.

(*g*) The relationship of each software program to the avowed end-use of the hardware equipment.

* * * * *

PART 379—TECHNICAL DATA

§ 379.4 [Amended]

b. A footnote is added following the word "commodity" in 379.4(b)(1)(iv) as follows:

Section 376.10(a)(1)(vii) requires exporters of digital computer equipment to describe on their license applications any software, including that shipped under General License GTDR, to be used with the equipment.

c. A new § 379.5(e)(3) is added as follows:

§ 379.5 Validated license applications.

(e) * * *

(3) *Computer Software.* Applications to export software subject to validated export licenses should provide the information detailed in § 376.10(a)(1)(vii), and in addition, should identify the location, origin, and model of the equipment with which the software will be used. For software, the applicant should indicate on the application the Commodity Control List Processing Code for the equipment with which the software will be used.

* * * * *

(Secs. 5, 13, 15, and Pub. L. 96–72, 93 Stat. 503, to be codified at 50 U.S.C. App. 2401 *et seq.*; Executive Order 12214, 45 FR 29783 (May 6, 1980); Department Organization Order 10–3, 45 FR 6141 (January 25, 1980); International Trade Administration Organization and Function Order 41–1, 45 FR 11862 (February 22, 1980); and International Trade Administration Organization and Function Order 41–4 (effective August 26, 1980))

Dated: December 2, 1980.

Kent N. Knowles,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 80-37862 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 3

Revision of Registration Regulations; Final Rules; Designation of New Part

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules and designation of new Part 3.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has revised certain of its regulations which relate to the registration of futures commission merchants, floor brokers, associated persons, commodity trading advisors and commodity pool operators. The regulations require that each applicant for registration as an associated person ("AP") be "sponsored" by a futures commission merchant ("FCM") which must screen that person's application and certify that it is accurate and complete to the best of the FCM's knowledge, information, and belief. The regulation generally makes AP registration coextensive with, and conditioned upon, the registrant's association with the sponsoring FCM. The new regulations also require fingerprinting for all categories of registrants with the Commission; certain registrants and principals of registrants are, however, exempted from that requirement.

The new sponsorship requirements are necessary to establish a uniform industry-wide minimum standard for pre-employment evaluation of associated persons; to insure that all FCMs develop programs that will result in the overall upgrading of APs registered with the Commission; to implement fully the provisions of the Commodity Exchange Act that require an individual to be registered as an associated person of a particular FCM; and to reduce a regulatory burden by eliminating the present biennial renewal requirement for all APs and by substituting therefor registration for as long as the person remains associated with a specified registered FCM or its agent. The fingerprinting requirements are necessary to permit improvements in the Commission's background checking of applicants for registration, to permit positive identification of certain individuals with common names, to reduce the number of applications filed by individuals who are unfit for registration, and to facilitate fitness reviews of registrants on a spot and periodic basis.

In addition, for the sake of clarity and to facilitate their use, the Commission, in adopting these rules, has reorganized and consolidated most of its registration regulations in a new Part 3 of Title 17 of the Code of Federal Regulations.

DATES: The final rules and designation of Part 3 are effective July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director for Registration, or Kenneth M. Rosenzweig, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254–9703 or 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On March 20, 1980, the Commission proposed substantial revisions to its registration regulations and, in particular, to the requirements governing the registration of associated persons. 45 FR 18356. The Commission has carefully considered all of the comments received in response to that proposal and, based in part upon those comments, has determined to make certain changes in those proposed rules. The Commission indicated in its proposal that the revised Form 8–R would be published for public comment at a later date and that other related issues would be addressed at that time, and in a separate **Federal Register** notice published today, the Commission is proposing for public comment the revised Form 8–R, new Forms 8–S and 8–T, and additional regulations to implement fully the regulations it is now adopting.

In addition, the Commission has reorganized most of its registration regulations and consolidated them in Part 3 of Chapter I, Title 17 of the Code of Federal Regulations.[1] A table which correlates both existing regulations and the Commission's earlier proposal with the new section references under Part 3 is set forth at the end of this supplementary information. Unless otherwise indicated, all references in the text which follows will be to the newly adopted Part 3.

B. Major differences between proposed and final rules

As proposed, the regulations would have required the fingerprinting of all registrants and principals of registrants. The Commission has continued to evaluate this proposal in view of its regulatory objectives in revising the registration program and of the role of fingerprinting in that program. Based upon these considerations, the Commission has determined that its objectives can be met, while saving both the Commission and the industry what might otherwise be an unwarranted expenditure of time and money, by exempting, in general, existing registrants and principals from the fingerprinting requirement. In addition, the Commission has made a number of other changes in the final regulations which will reduce the costs of compliance with the fingerprinting requirements for those persons who are not so "grandfathered."

The proposed regulations would have required an FCM sponsoring the registration of an associated person to verify the applicant's entire ten-year education and employment history, as provided on the Form 8–R. Throughout this rulemaking proceeding, the Commission has sought to refine its objectives with care and to be sure that whatever burdens were imposed upon the industry were no greater than necessary to accomplish the Commission's goals. The Commission believes that an applicant's most recent employment and educational history is of greatest importance; accordingly, the objectives of FCM "screening" will be met by requiring FCMs to verify only the preceding five years of that history.

When the Form 8–R is being used as an application for AP registration, the Commission has modified its proposal to allow a sponsoring FCM to submit the certifications required by these regulations separately from the rest of that Form. Thus, the Commission will be able to proceed with its agency and Federal Bureau of Investigation ("FBI") checks on the basis of the Form 8–R and fingerprint card while the FCM proceeds with its screening of the application. The Commission believes that this "dual processing" can significantly shorten the time required for an AP to become registered without any sacrifice of the regulatory goals which have made this rulemaking necessary.

II. Summary Analysis of the Final Rules

Fingerprinting. As proposed, the regulations would have required the one-time filing of a fingerprint card by each "principal," as defined, of an FCM,[2] commodity trading advisor ("CTA")[3] and commodity pool operator ("CPO")[4] at the time the FCM, CTA or CPO first filed for renewal of registration after the effective date of the proposed regulations.[5] The proposed regulations would have similarly required the one-time filing of a fingerprint card by all floor broker applicants and registrants.[6] Finally, the proposed regulations would have required each currently registered associated person[7] to file a fingerprint card at the time his current registration expired.[8]

Thirty of the thirty-five written comments received by the Commission addressed the proposed fingerprinting requirements. Some of the commentators specifically endorsed fingerprinting as a means of deterring unfit individuals from entering the industry while others were opposed to the proposed requirements on the grounds that fingerprinting was unnecessary and would not substantially further the Commission's stated objectives. A number of commentators objected to the additional costs associated with the proposed

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[1] Other regulations which set forth either further registration requirements or exemptions from registration remain unaffected. *See, e.g.*, 17 CFR 1.10 (financial reports of futures commission merchants); 17 CFR 4.13 (exemption from registration for certain commodity pool operators and commodity trading advisors). The Commission has recently proposed amendments to § 4.13 which would broaden the exemption from registration for certain commodity pool operators 45 FR 51600, 51605 (August 4, 1980).

[2] A futures commission merchant is an individual, association, partnership, corporation, or trust engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. Section 2(a)(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 2.

[3] A commodity trading advisor is any person who, for compensation or profit, engages in the business of advising others, either directly or through publications or writings, as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market, or who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning commodities; but does not include (i) any bank or trust company, (ii) any newspaper reporter, newspaper columnist, newspaper editor, lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation including their employees, (v) any contract market, and (vi) such other persons not within the intent of this definition as the Commission may specify by rule, regulation, or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession. Section 2(a)(1) of the Act, 7 U.S.C. 2. *See also* Section 4m of the Act, 7 U.S.C. 6m, *as amended by* Futures Trading Act of 1978, Pub. L. 95–405, § 8, 92 Stat. 870; 17 CFR 4.12, 4.13(b).

[4] A commodity pool operator is any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order. Section 2(a)(1) of the Act, 7 U.S.C. 2. *See also* 17 CFR 4.12, 4.13(a).

[5] Proposed §§ 1.10(a)(1)(iv), 1.10c(d), 1.10d(d).

[6] Proposed §§ 1.10a(a), (c).

[7] An associated person is any natural person who is associated with a futures commission merchant or with an agent of a futures commission merchant as a partner, officer, or employee (or a natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged. Section 1.3(aa); *see* Section 4k of the Act, 7 U.S.C. 6k, *as amended by* Futures Trading Act of 1978, Pub. L. 95–405, § 7, 92 Stat. 869–70. The Commission has recently issued an interpretative statement regarding the scope of the term "supervision" in the AP registration requirement in Section 4k of the Act. 45 FR 54032 (August 14, 1980).

[8] Proposed §§ 1.10b(c)(2), (d)(3).

fingerprinting requirements and, as described more fully below, were virtually unanimous in requesting that the Commission exempt (or "grandfather") certain individuals from those requirements as a means of reducing such costs.

The Commission has considered these comments and further analyzed its proposal. As a result of these further considerations, the Commission believes that certain amendments can be made in the fingerprinting proposal to reduce the cost of the program without at the same time so altering the program that it would not meet the regulatory objectives, set forth above, which have made fingerprinting necessary.

The first such change relates to the suggestion of several commentators that the Commission waive the fingerprinting requirement for those individuals who are registered with the Commission or who are currently affiliated with registrants as principals. The Commission believes that this suggestion has merit, that, as mentioned, the regulatory objectives of the fingerprinting program can be met, and the cost associated with fingerprinting—both to the industry and to the Commission—can be reduced by providing such a limited exemption. Accordingly, the Commission has determined not to require the fingerprinting of those principals and floor brokers [9] who have a "current" [10] Form 8–R or Form 94 on file with the Commission on July 1, 1981, the effective date of the regulations. Further, any principal or floor broker who does not qualify for the exemption described above and who is therefore required to file a fingerprint card with the Commission in accordance with §§ 3.10–3.14, in general will not be required to file another fingerprint card in connection with a later registration as a floor broker [11] or affiliation with a registrant as a principal.[12]

As noted above, proposed § 1.10b (d)(3) would have required an associated person to be fingerprinted at the time his current registration expired if he wished to remain associated with the sponsoring futures commission merchant or its agent as an associated person. For the reasons stated with respect to principals and floor brokers, the Commission has determined that the costs of such a requirement outweigh the regulatory benefits. The regulations have therefore been modified so that an associated person who is registered as such on July 1, 1981 will not be required to be fingerprinted when he must become sponsored by his firm at the expiration of his existing registration; such a person will, however, be required to file a fingerprint card if he subsequently applies for re-registration with a different sponsoring FCM or its agent.[13]

Three commentators also questioned the need to obtain a fingerprint card each time an individual applied for registration or re-registration as an associated person. The Commission, however, believes that this requirement is necessary. The CFTC routinely sends copies of Form 8–Rs to the FBI to determine if the applicant for registration or principal has a criminal record, and the FBI check reveals criminal records for a significantly greater percentage of AP applicants than for either floor broker applicants or principals. Further, based upon the Commission's experience through its administrative proceedings against registrants, the volume of complaints received, and the reparations cases which have been brought, it appears that APs are the category of registrant most likely to be involved in activities which bring into question their fitness. Moreover, such activity frequently occurs in a time frame fairly contiguous to the AP's change in firm. The Commission notes in this context, however, that any AP who, on the July 1, 1981 effective date of § 3.12, is associated with an FCM or its agent and is thereafter sponsored by that FCM will not be required to be fingerprinted as long as he remains with that FCM or its agent.

A number of commentators noted that an individual simultaneously applying for registration in both the commodity and securities industries (*e.g.*, as an AP and as a registered securities representative) might be permitted to start selling securities based on a "clean" fingerprint record with the FBI, but be precluded from registration as an AP because the fingerprints submitted with his Form 8–R were illegible and could not be checked by the FBI at the same time. The commentators suggested that in such instances, the Commission should modify the proposed rules so that an FCM/securities broker or dealer could file photocopies with the CFTC of all reports, including the fingerprint card and the criminal history sheet, if any, produced for the securities industry registration. The Commission believes this is a sensible suggestion and is therefore adding a new § 3.21 for its implementation.[14]

Some commentators urged the Commission to adopt a regulation comparable to Securities and Exchange Commission ("SEC") rule 17f–2(b),[15] which would exempt from fingerprinting those persons who are fingerprinted pursuant to any other law, rule, or regulation of any state, the Federal government, or respective agencies thereof, and submit, or cause to be submitted, such fingerprints to the Attorney General of the United States for identification and appropriate processing. In the past, the Commission has taken steps to reduce or avoid, in appropriate instances, the duplicative regulation of those Commission registrants which are also subject to regulation by the SEC.[16] In this instance, however, the Commission believes that adoption of the suggested approach is inappropriate in view of the differing statutory standards of fitness that are applied in the respective industries [17] and in view of the exemptions described above which the Commission is adopting for existing CFTC registrants and principals and for any individual who wishes to submit a photocopy of his FBI report.[18]

In the **Federal Register** release announcing the proposed regulations,

[9] A floor broker is any person who, in or surrounding any "pit," "ring," "post," or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market. Section 2(a)(1) of the Act, 7 U.S.C. 2.

[10] Section 3.1(b).

[11] Section 3.11(b).

[12] Sections 3.10(a)(2)(ii), (c)(2); 3.13(a)(2)(ii), (c)(2); 3.14(a)(2)(ii), (c)(2).

[13] Sections 3.12(c)(3), (d)(3).

[14] The exemption in § 3.21 is limited, however, and a person who is simultaneously applying for registration in the commodity and securities industries will not be permitted to submit a Form 8–R without a required fingerprint card in contemplation of later submitting photocopies of the FBI report produced for his securities industry registration.

[15] 17 CFR 240.17f–2(b).

[16] For example, the Commission amended §§ 1.10, 1.12, 1.16, 1.18 and 1.52 of its regulations to allow those FCMs, or applicants for registration therefor, which are registered with the SEC as securities brokers or dealers to comply with the Commission's financial reporting requirements by filing copies of Part II of the SEC's Financial and Operational Combined Uniform Single Report in lieu of the Commission's Form 1–FR. 45 FR 2019 (January 10, 1980).

[17] *Compare* Sections 4n (5), (6) and 8a (2), (3) of the Act, 7 U.S.C. 6n (5), (6) and 12a (2), (3) *and* 45 FR 14210 (March 5, 1980) (interpretation of factors for denial of registration for other good cause shown pursuant to Section 8a(2)(B) (ii) of the Act, 7 U.S.C. 12a(2)(B) (ii)) *with* Sections 3(a)(39) and 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(39), 78o(b)(4).

[18] The Commission further notes that the SEC has indicated that its rule 17f–2(b) is not applicable if the fingerprints have been submitted in a connection other than employment or association with the *present employer*. Consequently, persons who were fingerprinted for induction into the Armed Forces, for governmental employment, or for employment with entities other than the present employer cannot claim that exemption. 41 FR 13594, 13595 (March 31, 1976).

the Commission indicated that, based upon the comments received and its own further evaluation of the proposed fingerprinting program, it might adopt further provisions designed to assure the identity of the fingerprinted individual. The Commission specifically invited suggestions regarding possible further security measures and invited comments as to the need for, appropriateness of, and possible added costs of such additional measures.[19] The comments received in response to this inquiry have not convinced the Commission that such further security measures are appropriate and the Commission has not amended the regulations to provide such measures. If experience with the fingerprinting program later reveals significant abuses, the Commission will consider further steps to assure the integrity of the program at that time.[20]

"Principal." Several commentators observed that the Commission's proposed definition of the term "principal" was too broad in that it could include individuals who have no relationship to those activities of a registrant which are subject to regulation by the Commission. Two commentators further suggested that the definition should include the term "designated supervisor" because there are numerous instances in which a sales location may not have a formally designated branch office manager or in which the person responsible for supervising commodity business in accordance with Commission regulation 166.3 [21] may be someone other than the branch office manager. The Commission agrees and has included the suggested term. In addition, the Commission has reorganized § 3.1(a) to clarify the scope of its coverage.[22]

Registration of FCMs, CTAs and CPOs. Proposed §§ 1.10(a)(1), 1.10c and 1.10d would have required the existing principals of registered FCMs, CTAs, or CPOs to be fingerprinted and to complete a Form 8–R and would have required firms to file those Forms and fingerprint cards for their principals. For the reasons already stated, the Commission has decided to "grandfather" existing principals and excuse them from those requirements. In addition, the Commission has retained that portion of its proposal which exempts from those requirements any principal who has already filed a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10–3.14.[23] Thus a principal of an applicant for initial registration as an FCM, CTA or CPO or a newly added principal of an existing FCM, CTA or CPO will, at most, be required to submit a Form 8–R and a fingerprint card only once in connection with being a principal.[24]

A number of commentators noted the lack of any registration requirement for the non-clerical employees and agents of CTAs and CPOs who are involved in advising members of the public regarding commodities and in raising capital for commodity pools and stated that this results in inadequate protection for commodity customers and that the Commission should adopt regulations requiring the registration of such individuals. The Commission is well aware of these arguments and has, in connection with a separate proposal to amend Part 4 of its regulations, given notice that it is considering adopting such rules and has invited public comment on this subject.[25]

Registration of associated persons. Beginning July 1, 1981, an individual will have to be associated with a particular, sponsoring FCM or its agent to be granted registration as an AP. With the exceptions specified in § 3.12(b), such a registration will remain in effect indefinitely; the current requirement of biennial renewal of registration will, therefore, be eliminated. Further, and except as specified in the expedited registration provisions of § 3.12(d), each application for registration as an associated person will be deemed to be an application for initial registration, subject to denial or withdrawal under Section 8a(2) of the Act [26] and § 3.20 of the Commission's regulations.[27]

While a number of commentators were supportive of the Commission's proposal, other commentators voiced concern that the regulation might be unduly burdensome to the sponsoring FCMs. The Commission has carefully considered these comments and has found, based upon the record, that the benefits enumerated above far outweigh the added costs to FCMs. Based upon its careful review of the record, however, the Commission is persuaded that certain changes, discussed below, accommodate the majority of the commentators' concerns without an unacceptable sacrifice of the Commission's regulatory objectives.

Under section 3.12(c)(1)(ii), the sponsoring FCM must verify the accuracy of the education and employment history supplied by an AP applicant while § 3.12(c)(1)(iii) requires the firm to certify that to the best of its knowledge, information, and belief, all of the publicly available information supplied on by Form 8–R is accurate and complete. As the Commission stated when it proposed these requirements, background screening is already conducted by many firms and the required screening procedures are not expected to increase significantly the costs for such firms. Moreover, the proposed sponsorship requirements do no more than make uniform what should be the ordinary and customary practice for every responsible FCM and the anticipated upgrading of quality overall among registrants should ultimately lower costs by reducing turnover of personnel, lost business due to customer dissatisfaction, and litigation arising from the acts of employees.[28]

The Commission appreciates, however, as some commentators pointed out, that an FCM may need 4–5 weeks to complete its background check of the applicant prior to the submission of the Form 8–R. Further, as was noted in the **Federal Register** notice proposing these regulations, a minimum of 8–10 weeks is required for the Commission to process an application after it is filed, and in routine cases, most of this time is necessary for the FBI to check its records.[29] In view of the comments and its own further study of this problem, the Commission believes that the overall time required can be reduced by permitting the Commission and the FCM to proceed simultaneously with their processing of the Form 8–R and the final regulation has been modified to permit this "dual processing" of applications. As adopted, the final regulations permit an FCM to file the Form 8–R, registration fee and, in appropriate cases, fingerprint card before the firm completes its required checks; the FCM is then able to submit the required certifications when

[19] 45 FR 18356, 18357 n.15 (March 20, 1980).

[20] Applicants for registration and principals should be aware that the willful misrepresentation of the identity of an individual by the submission to the Commission of a false fingerprint card or photocopy thereof would constitute a criminal offense. Section 9(b) of the Act, 7 U.S.C. 13(b); 18 U.S.C. 1001; *see* 18 U.S.C. 2. *See also* Section 13(a) of the Act, 7 U.S.C. 13c(a).

[21] 17 CFR 166.3.

[22] In the **Federal Register** release announcing the proposed regulations, the Commission indicated that proposed § 1.3(v), if adopted, would render unnecessary the separate definition of "principal" contained in 17 CFR 4.10(e). 45 FR 18356, 18358. Upon reconsideration of the differing interests to be served by registration and by the disclosure requirements of the CPO/CTA rules (of which § 4.10(e) is a part), the Commission has determined not to rescind § 4.10(e).

[23] Sections 3.10 (a)(2), (c); 3.13 (a)(2), (c); 3.14 (a)(2), (c).

[24] Those persons remain subject, however, to the provisions of § 3.12, which governs the registration of associated persons, and to the supplemental filing provisions of § 3.22.

[25] 45 FR 51600, 51601 (August 4, 1980).

[26] 7 U.S.C. 12a(2).

[27] Existing § 1.10e, 17 CFR 1.10e, has been redesignated as § 3.20, effective July 1, 1981.

[28] 45 FR 18356, 18357 (March 20, 1980).

[29] *Id.* at 18357 n.14.

it has completed its screening of the application.[30]

The Commission specifically requested comments concerning the appropriateness and desirability of retaining the current educational background question on Form 8–R.[31] Most commentators who responded favored retaining the question, but some of them noted the difficulty of verifying such information, particularly where such information dates back several years, and alluded to a similar problem with respect to the applicant's employment history. The Commission, having carefully weighed the stated objectives of the regulations against these comments and its own desire to avoid undue regulatory burdens, has concluded that FCM verification for these categories can be limited to the preceding five years. The Commission would expect to alter this requirement if its experience indicated the need to do so.

Several commentators apparently did not clearly understand the scope of the requirement that sponsoring FCMs certify the publicly available information supplied by the applicant on Form 8–R. The Commission, therefore, wishes to provide further guidance. If, for example, an AP applicant or registrant answered "Yes" in response to any of the questions in the proposed Form 8–R which relate to regulatory and judicial sanctions (questions 14–19), the sponsoring FCM would be required to make whatever inquiries were necessary to certify that the individual's representations about, and documentation of, the status or disposition of the matter were, in fact, accurate and complete. If in certain instances, however, a sanction or judgment has been sealed or expunged so that the information in question is not "publicly available," a sponsoring FCM would be unable and therefore not required to certify its accuracy. Further, while § 3.12(c)(1)(iii) requires the sponsoring FCM to investigate and document any adverse, publicly available information *which is reflected in the application,*[32] the Commission wishes to emphasize that the regulation would not, as one commentator stated, "require an FCM to search the public records in every county in every state, peruse the records of the federal courts, or * * * obtain negative information in an applicant's past when there is no indication of such on the application."

One commentator inquired as to what procedure the Commission contemplated when an FCM, consistent with § 3.12(c)(1)(i), has certified its intention to hire an applicant if he becomes registered as an AP but subsequently, the firm's business needs change or it obtains information about the applicant which calls into question his fitness for registration. In such an instance, the sponsoring FCM or its agent could simply decline to hire the individual and, consistent with § 3.31(c)(1), notify the Commission of that decision. In those instances where the decision is based upon the FCM's discovery of such information about the applicant, a decision to withdraw an offer of employment would be consistent with one of the underlying purposes of FCM sponsorship of associated persons.

The Commission specifically invited comments on whether it would be appropriate to prohibit an associated person from having more that one sponsor at a time.[33] The Commission has carefully considered the comments it received on this point, virtually all of which were in opposition to "multiple sponsorship." In view of the obvious difficulties of supervision in such a situation[34] and in view of the inherent possibilities for conflicts of interest that might arise if an AP were to have more than one sponsor, the Commission has determined that it is necessary and appropriate generally to prohibit an AP from being associated with more than one FCM or agent of an FCM at any time.[35] In making this finding, the Commission has concluded that the possible adverse effects of such a limitation on competition are outweighed by its regulatory benefits. Based upon both the Commission's past experience and upon the comments, it appears that very few persons will be adversely affected by this decision. The Commission nonetheless wishes to emphasize that the regulations provide an exemption procedure for any person who is so affected.[36]

Section 3.12(d) provides an expedited re-registration procedure for certain APs which was generally supported by the commentators. Some of those commentators were concerned, however, because the proposal would have made it necessary, as a practical matter, for the sponsoring FCM to telephone the Commission's Registration Unit to confirm that the applicant qualified for the expedited procedure, thereby causing unwarranted delays. The Commission shares this concern and has modified the regulation so that it is the applicant who must certify his eligibility for the expedited procedure.[37]

As proposed, the expedited procedure described above would have been available, *inter alia,* to any person whose registration as an AP had terminated in the preceding thirty days.[38] In response to the Commission's specific request for comments concerning the appropriateness of this 30-day period,[39] several commentators stated that the grace period was too short. The Commission has doubled the permissible interval between sponsorships so that an AP will now have 60 days after the termination of his earlier employment during which he can use the expedited procedure. The Commission believes that to go beyond this 60-day period would increase the probability that adverse factors affecting the individual's fitness may have occurred in the interim and would, therefore, jeopardize the purposes of AP sponsorship.

One commentator noted that the proposed expedited registration procedure would not be available to any associated person who, *inter alia,* was the subject of a pending administrative proceeding which sought to deny, suspend or revoke that person's registration with the Commission.[40] This commentator suggested the deletion of this qualification because it would have the effect of withholding registration from such an applicant until he completed the "regular" registration process.

One of the central objectives of registration is to insure, to the extent reasonably possible, the fitness of each individual who is granted registration by the Commission and, as noted earlier, each association with an FCM or its agent will require such a grant of registration. The Commission, however, has carefully reviewed the proposed exception to the expedited registration

[30] Section 3.12(c)(2). The Commission has also increased from thirty to sixty days the time period in which an FCM is allowed to submit those items for an AP who has used the expedited registration procedures. Section 3.12(d)(3).

[31] 45 FR 18356, 18359 n.39 (March 20, 1980).

[32] *Id.* at 18359.

[33] *Id.* at 18356 n.4.

[34] *See* Commission rule 166.3, 17 CFR 166.3.

[35] Section 3.12(f).

[36] Section 3.12(g). A petition for relief from the prohibition against dual and multiple associations should reflect the agreement of not only the affected AP(s), but also of both or all of the FCMs that would be sponsoring the AP(s).

[37] Section 3.12(d)(2); proposed Form 8–S.

[38] Proposed § 1.10b(d). Both the Commission's proposal and the regulation it is adopting today also make this procedure available to any person whose registration as an AP was *granted* within the preceding year or who, at the time of the first expiration of that person's registration as an AP subsequent to the July 1, 1981 effective date of the regulation, is associated with the sponsoring FCM or its agent as an associated person. Section 3.12(d)(1); proposed § 1.10b(d).

[39] 45 FR 18356, 18359 n.41 (March 20, 1980).

[40] Proposed § 1.10b(d)(1)(iii).

procedure and has determined that it should be deleted.

Section 3.12(d)(1)(iv) instead requires that in those instances where the applicant is the subject of pending proceedings to deny, suspend or revoke his registration in any capacity or where the applicant has, within the preceding year, been allowed to withdraw an application for registration in any capacity, the applicant must certify that the sponsoring FCM has been given a copy of the complaint or letter issued by the Commission in connection with that proceeding or withdrawal. The sponsoring FCM is not required to certify that it has received a copy of that complaint or letter unless the applicant has indicated that he is within the scope of that provision.[41] The Commission emphasizes, however, as it did when it proposed these regulations, that the granting of registration under this expedited procedure does not, and in fact, could not constitute a finding of fitness.[42]

In the **Federal Register** notice accompanying the proposed rules, the Commission proposed to delete the registration requirement for certain foreign associated persons.[43] One commentator requested clarification of whether an AP would have to register as such if he were employed by a non-domestic agent of an FCM and neither solicited nor accepted orders from persons residing within the United States. As long as a person neither solicits nor accepts orders from within, or from any person residing within, the United States, its territories or possessions, nor supervises any person or persons so engaged, he will not have to register as an AP, irrespective of whether he is associated with an FCM or with an agent of an FCM.

Agents of FCMs. Some commentators questioned whether an FCM can be expected to certify the intent of its agent to employ an applicant for AP registration. Section 3.12(c)(1)(i) requires an FCM only to certify its *present* intention, or that of its agent, to hire the applicant as an AP. The regulation does not, however, impose an inflexible obligation; if, as noted above, the business needs of the FCM or of the agent should change, or if the FCM discovers adverse information about the applicant in the course of its screening of the Form 8–R, the FCM can simply withdraw its sponsorship of the applicant and so notify the Commission.[44]

[41] Section 3.12(d)(1)(v).

[43] 45 FR 18356, 18359 (March 20, 1980).

[43] *Id.* at 18360.

[44] *See* § 3.31(c)(1).

Certain commentators questioned generally the Commission's authority to require the sponsorship by an FCM of an AP who is associated with an agent of that FCM. The Commission's authority in this regard is clear. The Commission is empowered by the Act, and in particular, by Sections 4k (1) and (2), 4p, 8a(1), and 8a(5) thereof, to specify conditions under which a person may be registered as an AP.

Section 4k(1) of the Act makes it unlawful for any person to be associated with a futures commission merchant or its agent in any capacity which involves the solicitation or acceptance of customers' orders (other than in a clerical capacity) or the supervision of other persons so engaged unless (with exceptions not here relevant) that person is registered with the Commission. Section 4k(1) further makes it unlawful for an FCM or its agent to permit any person performing those functions to become or to remain associated with that FCM or its agent unless he has first been registered in accordance with that section. The Commission has determined that FCM sponsorship is necessary to assure that the applicant for registration will, in fact, be associated with an FCM as required by the Act. Further, in enacting Section 4k, Congress expected the Commission to grant registration only to those individuals who were fit to stand in a fiduciary relationship to the public.[45] As such, Congress authorized the Commission in Section 4k(2) to specify that all applications for registration as an associated person shall be "in the form and manner prescribed by the Commission, giving information and facts as the Commission may deem necessary," and it is axiomatic that "the width of administrative authority must be measured in part by the purposes for which it is conferred."[46] Thus, when Section 4k is read as a whole and in light of the underlying Congressional purpose, any question of the Commission's authority to require sponsorship is removed.

In addition, Section 8a(1) of the Act[47] authorizes the Commission to register APs "in accordance with rules and regulations and in [the] form and manner to be prescribed by the Commission * * * " while Section 4p provides, in pertinent part, that "[t]he Commission may specify by rules and regulations appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of * * * those persons associated with futures commission merchants * * *." As such, it is within the Commission's discretionary authority to find, and the Commission has so found, that the sponsorship of an applicant for registration as an associated person is a "qualification" that is "necessary or desirable" to insure the applicant's fitness. This finding is consistent with the Congressional determination that the system of registration that existed prior to the 1974 amendments to the Act[48] was inadequate to control the abuses that were perpetrated by "customers' men" who had mishandled customers' accounts and who could change jobs without their new employer being aware of their derelictions. In amending the Act to require the registration of only those associated persons who were not found to be unfit, it was contemplated by the Congress that the Commission would prevent this problem from recurring in the future.[49]

The express power to promulgate regulations under Sections 4p and 8a(1) is supplemented by the Commission's broad general authority under Section 8a(5) "to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act."[50] Section 8a(5) enables the Commission not only to adopt regulations to effectuate a particular statutory provision but also to impose requirements to accomplish the Act's purposes even in the absence of a specific statutory source.[51] It is the judgment of the Commission that, consistent with Section 8a(5) of the Act, the requirements that the Commission is adopting today with respect to the registration of associated persons are reasonably necessary to effectuate Sections 4k, 4p, and 8a(1) of the Act and to accomplish one of the purposes of the Act, which is to assure the fitness of

[45] 40 FR 20614, 20615 (1975); *cf.* Savage v. CFTC, 548 F. 2d 192, 196 (7th Cir. 1977); CFTC v. J. S. Love & Assocs. Options, Ltd., 422 F. Supp. 652, 659 (S.D.N.Y. 1976); Klatt v. International Trading Group, Ltd., [1977–1980 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶20,636, at 22,598 (CFTC 1978).

[46] Permian Basin Area Rate Cases, 390 U.S. 747, 776 (1968).

[47] 7 U.S.C. 12a(1), *as amended by* Futures Trading Act of 1978, Pub. L. 95–405, § 17(1), 92 Stat. 874.

[48] Commodity Futures Trading Commission Act of 1974, Pub. L. 93–463, 88 Stat. 1389.

[49] *See* H.R. REP. 93–975, 93d Cong., 2d Sess. 78 (1974).

[50] 7 U.S.C. 12a(5).

[51] Ames v. Merrill Lynch, Pierce, Fenner and Smith, Inc., 567 F. 2d 1174, 1177–78 (2d Cir. 1977); Board of Trade Clearing Corp. v. United States [1977–1980 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶20,534, at 22,206–07 (D.D.C. 1978), *aff'd*, No. 78–1263 (D.C. Cir. March 29, 1979).

those persons who are registered with the Commission as associated persons.

As noted above, a few of the commentators inquired as to the Commission's authority to require the sponsorship by an FCM of an AP who is associated with an agent of that FCM. A person associated with an agent of an FCM as an AP is necessarily an agent of that FCM. An FCM is, of course, responsible for the acts of its agents.[52] Thus, and for the reasons stated above with respect to the Commission's authority to require sponsorship, the Commission may similarly require the sponsorship by an FCM of those APs who are associated with an agent of an FCM.

Regulations being adopted without prior notice. The Commission is today adopting two regulations without prior notice—§ 3.1(b), which defines "current" with respect to a Form 8–R or a Form 94 that has been filed with the Commission, and § 3.21, which allows the filing in certain circumstances of a photocopy of a fingerprint card and any accompanying FBI report. Sections 3.1(b) and 3.21 are being adopted solely to enable the Commission to grant the specific exemptions discussed above from the general applicability of the fingerprinting requirements which are being adopted today. These sections impose no added obligations and, to the extent they affect substantive responsibilities, they do so in conjunction with amended fingerprinting requirements to reduce the costs of compliance. Accordingly, the Commission finds that prior notice of these regulations is unnecessary.

The Commission is also amending § 3.4 to provide notice of an AP's registration to the sponsoring FCM rather than to the AP. The Commission received comments suggesting this change and finds that it is consistent with proposed § 1.10b(c)(3). Prior notice of this change is, therefore, unnecessary.

The Commission is also making certain technical amendments to Commission regulation 1.10e (which is being renumbered as § 3.20). In general, the regulation provides streamlined procedural steps in certain enumerated circumstances either for the denial or withdrawal of a registration application or for the commencement of a hearing for the purpose of determining a person's fitness for registration. The amendments merely update the regulation in view of a recently published Commission interpretation of the grounds which constitute "other good cause" for denial of registration pursuant to Section 8a(2)(B)(ii) of the Act, 7 U.S.C. 12a(2)(B)(ii).[53] Prior notice of this change is, therefore, unnecessary.

Lastly, the Commission is amending existing § 1.15(a) of its regulations so that an individual who is registered solely as a floor broker or as an AP will not be required to re-register in the event of a change in the name of that individual. The Commission finds that the existing requirement in § 1.15(a) (and on and after July 1, 1981, § 3.32(a)) is unnecessary in its application to floor brokers and APs inasmuch as this information is already required, and would continue to be required, to be reported by floor brokers and APs to the Commission under its regulations.[54] Any person who is registered as an FCM, CTA or CPO will, however, continue to be required to apply for a new registration as such in the event of a change in name.

III. Table Cross-Indexing Existing and Proposed Regulations to New Section Numbers in 17 CFR Part 3

Existing or proposed section	Part 3 designation
§ 1.3(v)—Proposed	§ 3.1(a)
§ 1.7	§ 3.10(d)
§ 1.9	§ 3.2
§ 1.10(a)	§ 3.10(a)–(c)
§ 1.10a	§ 3.11
§ 1.10b	§ 3.12
§ 1.10c	§ 3.13
§ 1.10d	§ 3.14
§ 1.10e	§ 3.20
§ 1.10f—Proposed	§ 3.22
§ 1.11	§ 3.3
§ 1.13	§ 3.4
§ 1.14	§ 3.31(a)–(b)
§ 1.14(d)—Proposed	§ 3.31(c)(1)
§ 1.15	§ 3.32

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2, 4d, 4e, 4f, 4k, 4m, 4n, 4p, and 8a thereof, 7 U.S.C. 2, 4 and 4a, 6d, 6e, 6f, 6k, 6m, 6n, 6p, and 12a, *as amended*, 92 Stat. 865 *et seq.*, the Commission hereby designates the following Part 3 of Chapter I of 17 CFR. In adopting these rules, the Commission has taken into consideration the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.3(aa) is amended to read as follows:

§ 1.3 Definitions.

* * * * *

(aa) *Associated person.* This term means any natural person who (as provided in section 4k of the Act) is associated with a futures commission merchant or with an agent of a futures commission merchant, as a partner, officer, or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (1) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (2) the supervision of any person or persons so engaged.

* * * * *

Minimum Financial and Related Reporting Requirements

2. The heading "MINIMUM FINANCIAL AND RELATED REPORTING REQUIREMENTS" is inserted preceding § 1.10.

§ 1.10 [Amended]

3. In § 1.10, the section heading is amended to read "Financial reports of futures commission merchants" and paragraph (a)(1) is deleted and reserved.

§§ 1.7, 1.9, 1.10a, 1.10b, 1.10c, 1.10d, 1.10e, 1.11, 1.13, 1.14 and 1.15 [Removed]

4. Sections 1.7, 1.9, 1.10a, 1.10b, 1.10c, 1.10d, 1.10e, 1.11, 1.13, 1.14 and 1.15 are deleted and reserved and the heading "Registration" preceding § 1.7 is deleted.

5. Chapter I of 17 CFR is revised by adding a new Part 3 as follows:

PART 3—REGISTRATION

Sec.

3.1 Definitions.
3.2 Registration as one type of person not included in registration as any other type of person.
3.3 Registration fees; form of remittance.
3.4 Notification of registration.
3.5–9 [Reserved]
3.10 Registration of futures commission merchants.
3.11 Registration of floor brokers.
3.12 Registration of associated persons.
3.13 Registration of commodity trading advisors.
3.14 Registration of commodity pool operators.
3.15–19 [Reserved]
3.20 Delegation of authority to deny registration.
3.21 Exemption from fingerprinting requirement in certain cases.
3.22 Supplemental filings.
3.23–30 [Reserved]
3.31 Deficiencies, inaccuracies, and changes, to be reported.
3.32 Changes requiring new registration.

Authority: 7 U.S.C. 2, 4, 4a, 6d, 6e, 6f, 6k, 6m, 6n, 6p, and 12a.

[52] Section 2(a)(1) of the Act, 7 U.S.C. 4; Commission rule 1.2, 17 CFR 1.2; *see* Commission rule 166.3, 17 CFR 166.3.

[53] 45 FR 14210 (March 5, 1980).

[54] Commission rule 1.14(b), 17 CFR 1.14(b); *see* § 3.31(b); proposed Form 8–R.

§ 3.1 Definitions.

For purposes of this part:

(a) *Principal.* Principal means, with respect to an applicant for registration, a registrant or a person required to be registered under the Act or these regulations: (1) any person including, but not limited to, a sole proprietor, general partner, officer, director, branch office manager or designated supervisor, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over activities of that person which are subject to regulation by the Commission; (2) any holder of more than ten percent of the outstanding shares of any class of stock; or (3) any person who has contributed more than ten percent of the capital.

(b) *Current.* As used in §§ 3.10–3.14, a current Form 8–R or Form 94 is any such Form which has been filed by or on behalf of a registrant or a principal if, subsequent to the filing of that Form, that registrant or principal has been continuously registered or continuously affiliated with a registrant as a principal.

§ 3.2 Registration as one type of person not included in registration as any other type of person.

Registration as one type of person subject to regulation under the Act shall not include registration as any other type of person subject to regulation under the Act, except that a natural person who is registered as a futures commission merchant or as a floor broker (and such registration is not suspended or revoked) need not also register as an associated person.

§ 3.3 Registration fees; form of remittance.

Each application for registration, or renewal thereof, as a futures commission merchant must be accompanied by a fee of $200, plus a fee of $6 for each domestic branch office and for each correspondent or agent, operating within the United States, authorized to solicit or accept orders for the purchase or sale of any commodity for future delivery on behalf of the applicant. Each application for registration, or renewal thereof, as a floor broker must be accompanied by a fee of $20. Each Form 8–R submitted in connection with the registration of an associated person must be accompanied by a fee of $20. Each application for registration, or renewal thereof, as a commodity trading advisor or commodity pool operator must be accompanied by a fee of $50. Fees must be remitted by money order, bank draft, or check, payable to the Commodity Futures Trading Commission. All registration fees are nonrefundable, unless the applicant withdraws the application before any processing of that application has occurred.

§ 3.4 Notification of registration.

Upon receipt of an application for registration or renewal thereof the Commission will, if registration is granted, notify the registrant that he has been registered under the Act, except that with respect to an application for registration of an associated person, the Commission will notify the futures commission merchant with which the registrant is associated.

§§ 3.5–3.9 [Reserved]

§ 3.10 Registration of futures commission merchants.

(a) *Initial registration.* (1) Application for initial registration as a futures commission merchant must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto and the provisions of § 1.10 of this chapter.

(2) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14.

(b) *Renewal of registration.* Application for renewal of registration as a futures commission merchant must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(c) *Addition of principals subsequent to filing of Form 7–R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14: *Provided,* that the futures commission merchant must notify the Commission within twenty days of the name of such added principal on Form 3–R.

(d) *Exemption from registration for certain persons.* A person trading solely for proprietary accounts, as defined in § 1.3(y) of this chapter, is not required to register as a futures commission merchant: *Provided,* that such a person remains subject to all other provisions of the Act and of the rules, regulations and orders thereunder.

§ 3.11 Registration of floor brokers.

(a) [Reserved]

(b) *Initial registration.* Application for initial registration as a floor broker must be on Form 8–R, completed and filed with the Commission in accordance with the instructions thereto. Each applicant for initial registration as a floor broker must file his fingerprints with the Form 8–R on a fingerprint card provided by the Commission for that purpose except that a fingerprint card need not be filed by any applicant who: (1) on July 1, 1981 has a current Form 8–R or Form 94 on file with the Commission; or (2) has filed a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14.

(c) *Renewal of registration.* Application for renewal of registration as a floor broker must be on Form 8–R, completed and filed with the Commission in accordance with the instructions thereto. A registrant applying for renewal of registration as a floor broker may incorporate by reference information furnished to the Commission by the registrant on a Form 8–R or supplement thereto previously filed with the Commission if such information remains accurate and unchanged.

§ 3.12 Registration of associated persons.

(a) *Registration required.* It is unlawful for any person to act as an associated person unless registered as such under the Act in accordance with the procedures in paragraphs (c) or (d) of this section, except that this section does not preclude any registered associated person who was so registered on July 1, 1981 from continuing to act as such until that person's current registration expires.

(b) *Duration of registration.* A person registered in accordance with paragraphs (c) or (d) of this section and whose registration has neither been suspended nor revoked will continue to be so registered until: (1) the cessation of the association of the registrant with the futures commission merchant or its agents; or (2) the revocation, suspension, lapse, or withdrawal of the registration of the futures commission merchant with which the registrant is associated.

(c) *Application for registration.* Except as otherwise provided in paragraph (d) of this section, application for registration as an associated person must be on Form 8–R, completed and filed with the Commission in accordance with the instructions thereto.

(1) No person will be registered as an associated person in accordance with this paragraph (c) unless an officer, if the registered futures commission merchant is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship, of such futures commission merchant has signed and dated a certification in writing, stating that:

(i) It is the intention of the futures commission merchant or its agent to hire or otherwise employ the applicant as an associated person and that it will do so within thirty days after the receipt of the notification provided in accordance with paragraph (c)(4) of this section and that the applicant will not be permitted to solicit or accept customers' orders (other than in a clerical capacity) or to supervise any person or persons so engaged until the applicant is registered as an associated person in accordance with this section;

(ii) The futures commission merchant has verified the information supplied by the applicant in response to the questions on Form 8–R which relate to the applicant's education and employment history during the preceding five years, except that this paragraph (c)(1)(ii) does not apply to any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1981, is associated with the certifying futures commission merchant or its agent; and

(iii) To the best of the futures commission merchant's knowledge, information, and belief, all of the publicly available information supplied by the applicant on Form 8–R is accurate and complete: *Provided*, That it is unlawful for the futures commission merchant to make the certification required by this paragraph (c)(1)(iii) if the futures commission merchant knew or should have known that any of that information is not accurate and complete.

(2) The certification required by paragraph (c)(1) of this section may be submitted with the Form 8–R or may be submitted separately at a later date.

(3) Each Form 8–R filed in accordance with the requirements of paragraph (c) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided by the Commission for that purpose, except that this paragraph (c)(3) does not apply to any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1981, is associated with the certifying futures commission merchant or its agent as an associated person.

(4) When the Commission determines that an applicant for registration as an associated person is not unfit for such registration, it will provide notification in writing to the futures commission merchant which has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted contingent upon the futures commission merchant or its agent hiring or otherwise employing the applicant as such within thirty days.

(d) *Special registration procedures for certain persons.* (1) Any person whose registration as an associated person has terminated within the preceding sixty days, whose registration in accordance with this section has been granted within the preceding twelve months or who, on or prior to the first expiration of that person's registration as an associated person subsequent to July 1, 1981, is associated with the futures commission merchant making the certification permitted by paragraph (d)(1)(i) of this section or its agent will be registered as an associated person of a registered futures commission merchant or its agent upon the mailing by that futures commission merchant to the Commission of written certifications stating:

(i) That such person has been hired or is otherwise employed by that futures commission merchant or its agent;

(ii) That such person's registration as an associated person is not suspended or revoked;

(iii) That such person is eligible to be registered in accordance with this paragraph (d);

(iv) Whether there is a pending proceeding under section 6(b) of the Act or former § 1.10e or § 3.20 to deny, suspend or revoke such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in former §1.10e or § 3.20 and, if so, that the certifying futures commission merchant has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

(v) That the futures commission merchant has received a copy of the complaint or letter issued by the Commission if the applicant for registration has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph.

(2) The certifications permitted by paragraphs (d)(1)(i) and (d)(1)(v) of this section must be signed and dated by an officer, if the registered futures commission merchant is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. The certifications permitted by paragraphs (d)(1)(ii)–(iv) of this section must be signed and dated by the applicant for registration as an associated person.

(3) Within sixty days of mailing the certifications permitted by paragraph (d)(1) of this section, the associated person and the futures commission merchant must complete and the futures commission merchant must file with the Commission a Form 8–R in accordance with the instructions thereto. The Form 8–R must contain the certifications required by paragraphs (c)(1)(ii)–(iii) of this section and must be accompanied by the fingerprints of the applicant on a fingerprint card provided by the Commission for that purpose except that a fingerprint card does not have to be submitted for any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1981, is associated with the certifying futures commission merchant or its agent as an associated person.

(e) *Retention of records.* The futures commission merchant must retain in accordance with § 1.31 of this chapter such records as are necessary to support the certifications required by this section.

(f) *Dual and multiple associations prohibited.* No person who is associated with a futures commission merchant or with an agent of a futures commission merchant as an associated person may be simultaneously associated with any other futures commission merchant or with any other agent of a futures

commission merchant as an associated person.

(g) *Petitions for exemption.* (1) Any person adversely affected by the operation of this § 3.12 may file a sworn petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that an applicant should be exempted from the requirements of this section and why such an exemption would not be contrary to the public interest. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(2)(i) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Trading and Markets or his designee the authority to grant or deny petitions filed pursuant to this paragraph (g).

(ii) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated to him pursuant to paragraph (g)(2)(i) of this section.

§ 3.13 Registration of commodity trading advisors.

(a) *Initial registration.* (1) Application for initial registration as a commodity trading advisor must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(2) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14.

(b) *Renewal of registration.* Application for renewal of registration as a commodity trading advisor must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(c) *Addition of principals subsequent to filing of Form 7–R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of the principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14: *Provided,* that the commodity trading advisor must notify the Commission within twenty days of the name of such added principal on Form 3–R.

§ 3.14 Registration of commodity pool operators.

(a) *Initial registration.* (1) Application for initial registration as a commodity pool operator must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(2) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14.

(b) *Renewal of registration.* Application for renewal of registration as a commodity pool operator must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(c) *Addition of principals subsequent to filing of Form 7–R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) on July 1, 1981, has a current Form 8–R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with requirements of §§ 3.10, 3.11, 3.12, 3.13 or 3.14: *Provided,* that the commodity pool operator must notify the Commission within twenty days of the name of such added principal on Form 3–R.

§§ 3.15–3.19 [Reserved]

§ 3.20 Delegation of authority to deny registration.

(a) The Director or Deputy Director of the Division of Trading and Markets may at any time give written notice to any applicant for registration in any capacity under the Commodity Exchange Act, stating that:

(1) Information has come to his attention which tends to show that one or more of the following circumstances exist: That the applicant or any general partner, officer, director, person performing similar functions, controlling person, or holder of more than ten percent of the stock of the applicant—

(i) Was convicted of any felony in any State or Federal court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made a false or misleading material statement in his application or willfully omitted to state a material fact in connection with the application; or

(ii) Within ten years preceding the filing of the application has been convicted of a misdemeanor which (A) involves any transactions or advice concerning any commodity, contract for future delivery of a commodity, or security; (B) arises out of conduct of the business of a futures commission merchant, associated person, floor broker, commodity trading advisor, commodity pool operator, securities broker, securities dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or employee or affiliated person of any of the foregoing; or (C) involves embezzlement, defalcation, fraudulent conversion,

misappropriation of funds, securities or other property, forgery, counterfeiting, false pretenses, gambling, or similar crimes reflecting upon the ability of the applicant, if registered, faithfully to discharge the fiduciary duties imposed by the Act; or

(iii) At the time of the application, is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction, or is prohibited by agreement or settlement with the Commission or the Securities and Exchange Commission, or any State agency or governmental body, (A) from acting as a commodity trading advisor, commodity pool operator, futures commission merchant, floor broker, securities broker or dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or as an associated or affiliated person or employee of any of the foregoing, or (B) from engaging in or continuing any conduct or practice in connection with any such activity or involving any transaction or advice concerning commodities, contracts for future delivery of commodities, or securities; or

(iv) Within ten years preceding the filing of the application, has been found by any court of competent jurisdiction, by the Commission or the Securities and Exchange Commission, or has admitted by agreement or settlement to which the Commission or the Securities and Exchange Commission is a party, (A) to have violated any provision of the Commodity Exchange Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule or regulation under any such statutes; (B) to have aided, abetted, counseled, commanded, induced, or procured the violation by any other person of such statutes or rules or regulations; or (C) to have failed reasonably to supervise, with a view to preventing violations of such statutes, rules or regulations, another person who commits such a violation, if such person is subject to his supervision; or

(v) Is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, floor broker, or associated person, or suspending or expelling such person from membership on any contract market or futures association registered under the Act, or refusing such person registration in any capacity;

(2) This information, if true, is a basis upon which the applicant may be found unfit for registration and upon which the applicant's registration may be denied;

(3) Unless the applicant voluntarily withdraws his application it may be necessary, after further investigation of these facts, to institute the public procedures for denial of registration described in paragraph (b) of this section;

(4) In these circumstances, an applicant is required to reconfirm in writing that he wishes to have his application given further consideration; and

(5) Unless the applicant files with the Director or Deputy Director of the Division of Trading and Markets a notification in writing, within thirty days of the date of the notice that the applicant wishes to have his application for registration given further consideration, his application will be deemed to have been withdrawn and will be given no further consideration.

(b) On the basis of apparently credible evidence, the Executive Director may at any time give written notice to any applicant for registration in any capacity under the Commodity Exchange Act that:

(1) The Division of Trading and Markets and the Division of Enforcement allege and are prepared to prove that one or more of the circumstances set forth in paragraph (a)(1) of this section exist;

(2) The allegations set forth in the notice, if true, constitute a basis upon which the applicant may be found unfit for registration pursuant to Section 8a(2)(B) of the Commodity Exchange Act and upon which the applicant's registration may be denied;

(3) The applicant is entitled to a hearing at which he may challenge the truth of the allegations set forth in the notice or show cause why, notwithstanding the truth of those allegations, registration should nevertheless be granted;

(4) A hearing for these purposes may be obtained by filing a written request with the Executive Director within thirty days after the date of the notice to the applicant;

(5) If the applicant does not timely request a hearing he will be deemed to have waived his right to a hearing on all issues concerning his application; and

(6) If the applicant does not timely request a hearing the Commission or the Executive Director or Chief Administrative Law Judge (acting pursuant to authority delegated under paragraph (d) of this section) may thereafter decide whether to grant or deny his registration based upon the facts stated in the notice, which will not have been disputed and which may be deemed to be true for that purpose.

(c) If an applicant should request a hearing in accordance with paragraph (b)(4) of this section, an adjudicatory proceeding on the question of the applicant's fitness for registration shall thereafter be conducted and concluded in accordance with the Commission's Rules of Practice, 17 CFR Part 10; the matter shall be referred to the Chief Administrative Law Judge who shall set a date for hearing and assign an Administrative Law Judge to conduct the proceeding. For purposes of that proceeding, the notice given in accordance with paragraph (b) of this section shall be treated as a duly authorized complaint by the Division of Enforcement seeking, as relief, denial of the application for registration, and the request for hearing shall be treated as an answer which generally denies every allegation contained in the notice upon which a hearing has been requested: *Provided, however,* That (1) the Division of Enforcement may thereafter amend the complaint to seek such other and further relief as may be appropriate in view of the matters charged and, with leave of the Commission, may allege further grounds as a basis for denial of registration; and (2) the applicant may supplement his answer to set forth any affirmative defenses he may wish to assert and the alleged facts upon which those defenses are based. The provisions of §§ 10.22 and 10.23 of the Rules of Practice, concerning a complaint and answer, shall otherwise be inapplicable.

(d) If no request for a hearing is received by the Executive Director within thirty days after a notice has been given in accordance with paragraph (b) of this section, the Executive Director may proceed as follows:

(1) In the case of an applicant for an initial registration, pursuant to authority hereby delegated by the Commission, the Executive Director may determine the applicant's fitness for registration and may issue an order, pursuant to Section 8a(2) of the Commodity Exchange Act, granting or refusing registration to the applicant based upon the application, the notice with proof of service, and an appropriate showing that a hearing has not been requested.

(2) In the case of an applicant for renewal of a registration previously

granted, the Executive Director may transmit to the Chief Administrative Law Judge a true copy of the application, the notice with proof of service, and an appropriate showing that a hearing has not been requested, and, based thereon, the Chief Administrative Law Judge, pursuant to authority hereby delegated by the Commission, may determine the applicant's fitness for registration and may issue an order, pursuant to Section 8a(2) of the Commodity Exchange Act, granting or refusing registration to the applicant.

(e) Notwithstanding any other provision contained in this section, the Executive Director is hereby delegated authority pursuant to Section 8a(2)(A) of the Commodity Exchange Act to enter an order refusing to register any person if the prior registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked.

(f) A copy of any order issued pursuant to paragraph (d) or (e) of this section shall promptly be served upon the applicant and the Division of Enforcement and provided to each member of the Commission. Within fifteen days after service upon an applicant of an order granting or refusing registration issued pursuant to paragraph (d) or (e) of this section, the applicant or the Division of Enforcement may file with the Commission's Secretariat a petition for reconsideration setting forth the grounds in support thereof. The petition of an applicant shall not be based upon any matter of which the applicant had notice and opportunity for hearing under paragraph (b) of this section unless it be claimed, and supported by affidavit, that notice under paragraph (b) of this section was not timely received by the applicant.

(g) An order granting or refusing registration issued pursuant to paragraph (d) or (e) of this section shall be effective as a final order of the Commission thirty days after the date it was served upon the applicant. Within that period the Commission, on its own motion, or based upon a petition filed pursuant to paragraph (f) of this section, may stay the effectiveness of the order and then or thereafter may reverse, affirm or modify the order or direct reconsideration of the order on such basis and in accordance with such procedures as it may determine.

(h)(1) The Director or Deputy Director of the Division of Trading and Markets shall give notice under paragraph (a) of this section only with the concurrence of the Director of the Division of Enforcement or his designee. The Executive Director shall give notice under paragraph (b) of this section only with the concurrence of the Director of the Division of Trading and Markets, the Director of the Division of Enforcement and the Deputy General Counsel, or their designees.

(2) For purposes of this section, notice to and service upon the applicant shall be sufficient if mailed first class properly addressed to the applicant at the address shown on his application or any amendment thereto, and shall be complete upon mailing; a record showing the date upon which a document was duly mailed, and by whom, prepared and retained in the normal course of Commission business, shall be adequate proof of service of the document. Documents submitted to the Executive Director or the Director of the Division of Trading and Markets shall be considered filed only upon actual receipt.

(i) The Commission reserves to itself the decision in any case whether to institute a proceeding to determine whether to refuse an applicant's registration for reasons other than the existence of circumstances described in paragraph (a)(1) of this section.

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) Any person who is required by §§ 3.10, 3.11, 3.12, 3.13 or 3.14 to submit a fingerprint card may file, or cause to be filed, in lieu of such card, a legible, true, accurate and complete photocopy of:

(1) A fingerprint card which has been submitted to the Federal Bureau of Investigation for identification and appropriate processing, if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with the Commission of the photocopy; and

(2) Each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card.

(b) Each photocopy filed in accordance with this section must be signed and dated thereon. Such signature shall constitute a certification by that individual that the photocopy is true, accurate and complete and must be made by:

(1) *With respect to the fingerprints of an associated person:* An officer, if the futures commission merchant making the certifications required by § 3.12 is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship;

(2) *With respect to the fingerprints of a floor broker:* The applicant for registration; and

(3) *With respect to the fingerprints of a principal of a futures commission merchant, a commodity trading advisor, or a commodity pool operator:* An officer, if the futures commission merchant, commodity trading advisor or commodity pool operator is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship.

§ 3.22 Supplemental filings.

Notwithstanding any other provision of this chapter, the Commission or the Director of the Division of Trading and Markets or his designee, may, at any time, give written notice to any registrant, applicant for registration, or person required to be registered:

(a) That information has come to the attention of the Commission's staff which, if true, could constitute grounds upon which to base a determination that the person is unfit to become, or to remain, registered in accordance with the Act or the regulations thereunder and setting forth such information in the notice, or that the Commission has undertaken a routine or periodic review of the registrant's fitness to remain so registered; and

(b) That the person, or any individual who, based upon his relationship with that person is required to file a Form 8–R in accordance with the requirements of this part, as applicable, must, within five days of receipt thereof, or such shorter period of time as the Commission may specify, complete and file with the Commission a current Form 8–R, in accordance with the instructions thereto, which must be accompanied by that individual's fingerprints on fingerprint cards provided by the Commission for that purpose.

(c) Failure to provide the requested information is a violation of the Commission's regulations which itself constitutes grounds upon which to base a determination that the registrant is unfit to become or to remain so registered.

§§ 3.23–3.30 [Reserved]

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) Each applicant or registrant as a futures commission merchant, commodity trading advisor or commodity pool operator shall file promptly with the Commission a statement on Form 3–R to correct any deficiency or inaccuracy in its application for registration, or any schedule or supplemental statement

thereto, and to report any change which no longer renders accurate and current the information contained in any of the items on Form 7–R of such application or supplemental statement; or contained in any of the following items on Schedules A, B or C of Form 7–R:

(1) *With respect to a futures commission merchant.* The following items on Schedule A, "Application for Registration as Futures Commission Merchant":

Item 3—Correspondents and agents (excluding employees and associated persons) operating within the United States, authorized to solicit or accept orders in the name of the registrant;

Item 4—Commodity exchanges in the United States in which the registrant has membership privileges; and

Item 5—Participation in commodity option transactions by the registrant.

New domestic branch offices and new correspondents and agents who are operating within the United States and are authorized to solicit or accept orders on behalf of the futures commission merchant shall be reported promptly and fees shall be remitted as provided in § 3.3.

(2) *With respect to a commodity trading advisor.* The following items on Schedule B, "Application for Registration as Commodity Trading Advisor":

Item 4(a)—Manner of furnishing advisory services; and

Item 6—Ownership in, control or management authority over, or reciprocal business arrangements with futures commission merchants, agents of futures commission merchants, commodity pools, commodity pool operators, floor brokers, associated persons or other commodity trading advisors by the registrant or any persons named in Item 5 of Form 7–R.

(3) *With respect to a commodity pool operator.* The following items on Schedule C, "Application for Registration as Commodity Pool Operator":

Item 3—Name and form of organization of each pool operated by the registrant; and

Item 8—Ownership in, control or management authority over, or reciprocal business arrangements with, futures commission merchants or commodity trading advisors by the registrant or any persons named in Item 5 of Form 7–R.

(b) Each applicant or registrant as a floor broker or associated person and each principal of a futures commission merchant, commodity trading advisor or commodity pool operator must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which no longer renders accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions contained therein.

(c)(1) After the filing of a Form 8–R or a Certificate of Special Registration (Form 8–S) by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant or its agent, that futures commission merchant must, within ten days after the occurrence of either of the following, file a notice thereof with the Commission indicating: (i) the failure of that person to become associated with the futures commission merchant or its agent and the reasons therefor; or (ii) the termination of the association of that person with the futures commission merchant or its agent and the reasons therefor.

(2) [Reserved]

(3) Any notice required by this paragraph (c) must be filed on Form 8–T or on a Uniform Termination Notice for Securities and Commodities Industry Registration.

§ 3.32 Changes requiring new registration.

A new registration is required in the event of a change:

(a) In the name of the registrant if the registrant is a futures commission merchant, a commodity pool operator or a commodity trading advisor;

(b) In the form of organization of the registrant;

(c) In the ownership of the business of the registrant in the case of a sole proprietorship; and

(d) In the personnel of a partnership resulting from the death, withdrawal, or addition of a partner: *Provided,* That if such change does not, as a matter of law, create a new partnership, it may be reported by the registrant to the Commission on Form 3–R within 10 days of the date of such change, and if so reported a new registration shall not be required.

Appendix A to Part 1 Redesignated as Appendix A to Part 3

6. Appendix A to 17 CFR Part 1 (Interpretative Statement Regarding Good Cause Standards for Denial of Registration) is redesignated as Appendix A to 17 CFR Part 3.

Issued in Washington, D.C. On October 30, 1980 by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 80N–0140]

Common or Usual Names for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages

AGENCY: Food and Drug Administration.

ACTION: Reaffirmation of label requirements and extension of effective date.

SUMMARY: The Food and Drug Administration (FDA) is reaffirming its labeling requirement for percent declaration of individual juices in certain multi-juice beverages. The National Food Processors Association's (NFPA) petition for reconsideration in which it requested the rescission of this requirement is therefore denied. The grounds upon which the petitioner now relies were adequately considered by the Commissioner of Food and Drugs in promulgating the final rule. FDA was not persuaded then, nor is it persuaded now, that eliminating the percent declaration requirement of individual juices, when the individual juices are identified on the label or in labeling, is in the best interests of the consumer. However, FDA is extending the period of time for compliance with the labeling requirements of the common or usual name established for diluted fruit or vegetable juice beverages from July 1, 1981, to July 1, 1982, as requested by NFPA in order that an orderly disposal of label inventories can be made.

EFFECTIVE DATE: Effective July 1, 1982, for all affected products initially introduced or initially delivered for introduction into interstate commerce.

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: NFPA submitted to FDA a petition for reconsideration, dated July 10, 10980, in which it requested rescission of the requirement for declaration of each individual juice referred to on the label or in labeling for a multi-juice beverage. NFPA also requested an extension of the effective date for the final regulation from July 1, 1981 to July 1, 1982, so that there would be sufficient time to use up their existing label inventories.

NFPA asserts that § 102.33(a)(2)(ii) (21 CFR 102.33(a)(2)(ii)), which was established by final rule published in the

Federal Register of June 10, 1980 (45 FR 39247), should be rescinded because requiring the percentage of both the total juice and each individual juice referred to on the label or in labeling is redundant and would create unnecessary label overcrowding, reduce formulation flexibility, compel disclosure of trade secrets, and result in misleading declarations of individual juice percentage, e.g., "a multi-juice beverage containing nine percent pineapple juice, eight percent grapefruit juice, and eight percent guava juice would be required to bear a declaration of twenty-five percent fruit juice on the label." However, NFPA points out that "because § 102.33(a)(2)(ii) provides for the declaration of the percent of individual juices in five percent increments, rounded to the next lowest multiple of five, the principal display panel (PDP) of this product also would be required to bear a declaration of five percent pineapple juice, five percent grapefruit juice, and five percent guava juice. The large discrepancy between the total juice declaration (i.e., 25 percent) and the sum of the individual juice declaration (i.e., 15 percent) would create substantial consumer confusion. Moreover, for multi-juice beverages containing less than five percent of several kinds of juices, the required disclosures of this fact on the PDP would be of little, if any, value to consumers." In fact, NFPA states that, "as FDA recognized in the preamble to the proposed regulation, the overriding consumer interest is in the total juice content of any diluted juice beverage" and "FDA has failed to show that there is any consumer interest in a declaration of the percentage of both total juice and of individual juices in a multi-juice beverage for which references to the individual juices are contained on the label or in labeling."

In accordance with § 10.33 (21 CFR 10.33), FDA has reviewed the administrative record in regard to the labeling requirements set forth in § 102.33(a)(2)(ii) in light of the aforementioned objections raised by NFPA in its petition for reconsideration, and concludes that the Commissioner, in promulgating the final regulation, adequately considered the grounds upon which the petitioner now relies. FDA recognized, in promulgating this regulation, that dual declaration of both the total juice content and the individual juice content when referred to on the label or in labeling could lead to possible confusion among consumers, create the possibility of some label overcrowding, reduce formulation flexibility, and, in some instances, compel declaration of trade secrets. However, it was the contention of the agency then, and still is, that when the individual juices are identified on the label in some manner other than in the ingredient statement, it would be even more confusing to the consumer not to require the dual declaration because any statement less definitive than the percent of each identified juice denies the consumer the right to comparison buying and may be misleading as to the actual content of the individual juices in the drink. The consumer has a right to know the approximate amount of each of the identified juices in the drinks. For example, a multi-juice drink label may picture several fruits but in fact contain one in a significantly larger or smaller amount than all the others. For such a product, a declaration of only the total juice content would not inform the consumer of the predominance of any one of the pictured fruits, thus leading to the assumption that all of the fruits pictured are contained in approximately equal proportions.

Because of the possibility of deception, a total juice declaration alone is not adequate to fully inform consumers of the juice content of those multi-juice beverages which make some type of identity claim, other than in the ingredient statement, for the juices contained in the multi-juice drink. Therefore, after reconsidering and reviewing the labeling requirements of § 102.33(a)(2)(ii) for multi-juice diluted beverages, FDA is reaffirming the final regulation as published in the Federal Register of June 10, 1980 (45 FR 39247).

FDA reminds manufacturers that they are not in any way required to identify individual juices on their labels other than in the ingredient statement. However, should they choose to do so, the total juice declaration may be the sum of the rounded down individual juices, thus eliminating any apparent discrepancy caused by the requirement for dual declaration of percent total and individually identified juices. Alternatively, the multi-juice producers may wish to reformulate their products to adjust the levels of individual juice content in such a manner that any discrepancy between the total amount of juice used and the sum of the rounded down individual precentages is eliminated. The resulting label declaration will not be misleading to the consumer, nor will it be deceptive since, in either case, the juice content will be at least the amount declared.

FDA advises that there is nothing in the final regulation which prevents the producer from representing on the label only one or two of the individual juices (where there are three or more) that are present in the beverages. The effect of this is to require, in addition to the total percentage, the percent declaration of only those fruits that are depicted, represented, or highlighted on the label. This would allow the producers of multi-juice products an opportunity to better protect trade secrets, lessen the problem of PDP overcrowding, and allow better formulation flexibility.

As mentioned earlier in the preamble, NFPA also requested an extension of the effective date for compliance with the regulation from July 1, 1981 to July 1, 1982. NFPA contends that, while many manufacturers already declare the total percent juice on their labels, the additional requirement of individual juice percentages for multi-juice beverages will require extensive label revisions. Further, NFPA states that many producers, especially private label producers, currently have larger than 12-month label inventories. Therefore, the extension of the effective date for 1 year would provide sufficient time for an orderly use of the current label inventories, without requiring expensive destruction of existing inventories.

FDA agrees that an extension of the effective date for 1 year is needed to avoid costly destruction of existing label inventories that would result in higher costs to the consumers and therefore would not be in their best interest.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), the effective date for compliance with the labeling requirements of the common or usual name for diluted fruit or vegetable juice beverages is extended from July 1, 1981, to July 1, 1982, as follows: All affected diluted fruit or vegetable juice beverages initially introduced or initially delivered for introduction into interstate commerce after July 1, 1982, shall comply with 21 CFR 102.33 (45 FR 39247; June 10, 1980).

Elsewhere in this issue of the Federal Register, FDA is confirming the revocation of the stayed standards of identity for limeade and canned pineapple-grapefruit juice drink and announcing that the stays of the effective dates for the standards of identity for cranberry juice cocktail, artificially sweetened cranberry juice cocktail, lemonade, and colored lemonade remain in effect. Therefore, these products are nonstandardized foods and are subject to 21 CFR 102.33 (45 FR 39247; June 10, 1980) and this extension of effective date.

Dated: November 26, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-37576 Filed 12-1-80; 8:45 am]

BILLNG CODE 4110-03-M

21 CFR Part 146

[Docket No. 78N-0242]

Canned Fruit Juices; Standards of Identity for Cranberry Juice Cocktail, Artificially Sweetened Cranberry Juice Cocktail, Lemonade, Colored Lemonade, Limeade and Canned Pineapple-Grapefruit Juice Drink; Confirmation and Stay of Effective Dates of Revocation of Certain Stayed Regulations

AGENCY: Food and Drug Administration.

ACTION: Confirmation and stay of effective dates of revocation of certain stayed regulations.

SUMMARY: The Food and Drug Administration (FDA) confirms the effective date of the revocation of the stayed standards of identity for limeade and canned pineapple-grapefruit juice drink and stays the effective date for the revocation of the stayed standards of identity for cranberry juice cocktail, artificially sweetened cranberry juice cocktail, lemonade, and colored lemonade pending resolution of issues raised by objections. The stay of the standards of identity for cranberry juice cocktail, artificially sweetened cranberry juice cocktail, lemonade, and colored lemonade remains in effect pending a decision regarding the need for a hearing. A notice specifying any issues on which a hearing is justified and other pertinent information will be published in the **Federal Register** at a later date.

DATES: The revocation of the stayed standards of identity for limeade and canned pineapple-grapefruit juice drink became effective July 11, 1980. The stay of the effective date of the revocation of the stayed standards of identity for cranberry juice cocktail, artificially sweetened cranberry juice cocktail, lemonade, and colored lemonade is effective December 5, 1980.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: A final regulation establishing standards of identity for cranberry juice cocktail and artificially sweetened cranberry juice cocktail was published in the **Federal Register** of April 11, 1968 (33 FR 5617). In addition, a final regulation establishing standards of identity for lemonade, colored lemonade, limeade, and canned pineapple-grapefruit juice drink was published in the **Federal Register** of May 7, 1968 (33 FR 6862). Both final regulations were stayed in their entirety in response to objections. The stay of the final regulation for cranberry juice cocktail beverages was published in the **Federal Register** of July 13, 1968 (33 FR 10088), and the stay of the final regulation for the remaining diluted beverages was published in the **Federal Register** of July 27, 1968 (33 FR 10713).

FDA issued in the **Federal Register** of June 10, 1980 (45 FR 39247) a final regulation establishing a common or usual name for diluted fruit or vegetable juice beverages, other than diluted orange juice beverages (21 CFR 102.33). The basis for this common or usual name regulation was to enable consumers to make a value comparison among beverages at the time of purchase and thereby reduce the consumer confusion that exists in connection with diluted juice beverages. Therefore, in the **Federal Register** of June 10, 1980 (45 FR 39251), FDA revoked the stayed standards of identity for the following diluted fruit juice beverages: cranberry juice cocktail (21 CFR 146.110), artificially sweetened cranberry juice cocktail (21 CFR 146.111), lemonade (21 CFR 146.115), colored lemonade (21 CFR 146.125), limeade (21 CFR 146.130), and canned pineapple-grapefruit juice drink (21 CFR 146.133).

The order revoking the stayed regulations provided that any person who would be adversely affected could, on or before July 10, 1980, file written objections to the revocation and, if desired, request a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received regarding the revocation of the stayed standards of identity for limeade and canned pineapple-grapefruit juice drink.

Objections and Requests for a Hearing

Objections and requests for a hearing were filed relative to the revocation of the standards of identity for cranberry juice cocktail (§ 146.110), lemonade (§ 146.115), and colored lemonade (§ 146.125). While no specific objections were received to the revocation of the stayed standards of identity for artificially sweetened cranberry juice cocktail, FDA is of the opinion that the objections to the revocation of the stayed standard of identity for cranberry juice cocktail are applicable. The objections and requests for a hearing are as follows:

Cranberry Juice Cocktail

One letter of objection and request for a hearing objected on the grounds that the determination by FDA that establishment of a standard of identity for cranberry juice cocktail would "promote honesty and fair dealing in the interest of consumers" may not now be withdrawn on the unsupported assertion that the common or usual name regulation "reduce(s) * * * consumer confusion." The objection contended that in originally proposing the standard of identity for cranberry juice cocktail, FDA recognized that the high natural acid content of cranberries distinguished the juice drink made from cranberries from most other fruit juices and that the establishment of a standard of identity was an appropriate method to take this high natural acid content into account while still protecting the interest of consumers.

Lemonade and Colored Lemonade

One letter of objection and request for a hearing objected to the revocation of the stayed lemonade and colored lemonade standards on the grounds that the common or usual name regulation for diluted fruit or vegetable juice beverages, § 102.33, will not enable consumers to make value comparisons among the various products that would be allowed to be called lemonade. Further, the common or usual name regulation, rather than lessen consumer confusion as to what lemonade is, would increase consumer confusion, and would destroy the common understanding of lemonade that has built up over the past three decades. The objection maintains that consumers understand that lemonade is a mixture of water, lemon juice, and sugar and that nothing indicates that they expect the acidity to come from any source other than the lemon juice in the product. Further, it maintains that the consumers have come to expect the lemon taste that is achieved when 13 percent lemon juice is present. The stayed standards of identity for lemonade and colored lemonade require that the acidity be derived only from lemon juice and that the proportion of lemon juice used be sufficient to yield an acidity, calculated as anhydrous citrus acid, of not less than 0.70 gram per 100 milliliters of the finished beverage, equivalent to approximately 13 percent lemon juice. The objection maintains that the common or usual name regulation would permit citric acid and lemon flavoring, natural or artificial, to be used to produce beverages that taste

like lemonade but do not comply with the stayed standards.

Stay of Revocation of Identity Standards

Under section 701(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)) and § 12.23 (21 CFR 12.23), FDA hereby announces a stay of the effective date of revocation of those standards to which objections and requests for a hearing were received pending further review of the objections and requests for hearing under § 12.24 (21 CFR 12.24). If a hearing is determined to be justified on any issue, a notice of hearing as required by § 12.35 (21 CFR 12.35) will be published in the **Federal Register**. If a determination is made that a hearing is not justified in whole or in part, a notice of such determination under § 12.28 (21 CFR 12.28) will be published in the **Federal Register**.

The July 13, 1968 (33 FR 10088) stay of standards of identity for cranberry juice cocktail and artificially sweetened cranberry juice cocktail and the July 27, 1968 (33 FR 10713) stay of the standards of identity for lemonade and colored lemonade remain in effect pending a determination of whether a public hearing is necessary to resolve the issues raised by objections.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), notice is given that Part 146 is amended by revoking § 146.130 *Limeade* and § 146.133 *Canned pineapple-grapefruit juice drink;* and that objections and requests for a hearing under section 701(e) of the act (21 U.S.C. 371(e)) were received and pending a determination of whether a hearing has been justified, the effective date of the revocation of § 146.110 *Cranberry juice cocktail,* § 146.111 *Artificially sweetened cranberry juice cocktail,* § 146.115 *Lemonade,* and § 146.125 *Colored lemonade* is stayed until further notice, and the stay of the effective date of these standards remains in effect. Therefore, limeade, canned pineapple-grapefruit juice drink, cranberry juice cocktail, artificially sweetened cranberry juice cocktail, lemonade, and colored lemonade are nonstandardized foods and are subject to the labeling requirements of 21 CFR 102.33 (see 45 FR 39247; June 10, 1980). A regulation extending the effective date for compliance with § 102.33 appears elsewhere in this issue of the **Federal Register**.

Effective date. The revocation of the stayed standards of identity for limeade and canned pineapple-grapefruit juice drink became effective July 11, 1980. The stay of the effective date of the revocation of the stayed standards of identity for cranberry juice cocktail, artificially sweetened cranberry juice cocktail, lemonade, and colored lemonade is effective December 5, 1980.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: November 26, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-37577 Filed 12-1-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 176

[Docket Nos. 78F-0398 and 79F-0129]

Indirect Food Additives, Paper and Paperboard Components; Acrylamide and N-(Hydroxymethyl) Acrylamide

Correction

In FR Doc. 80-21290 appearing on page 48125 in the issue of Friday, July 18, 1980, make the following correction:

In the center column, in § 176.170(b)(2), in the fourth line of the List of Substances, ". . . 2-hydroxymethyl . . ." should have read "2-hydroxyethyl . . .".

BILLING CODE 1505-01-M

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21 CFR Part 640

[Docket No. 79N-0117]

Additional Standards for Human Blood and Blood Products, Source Plasma (Human); Amendment of Storage Temperature Requirements

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the storage temperature requirements for Source Plasma (Human) intended for manufacture into injectable products. This change permits an inadvertent exposure of the product to an episode of storage temperature fluctuation between −20° and −5° C for no more than 72 hours without requiring relabeling of the frozen product from "Source Plasma (Human)" to "Source Plasma (Human) Salvaged." Data submitted to the agency demonstrate the satisfactory recovery of clotting factor concentrates from the plasma despite the temporary elevation of storage temperature.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20250, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 19, 1979 (44 FR 60332), FDA proposed to amend the storage temperature requirements for Source Plasma (Human) intended for the manufacture into injectable products (21 CFR 640.76). The proposed rule stated that if the frozen product is inadvertently exposed to a temperature range of −20° C to −5° C for no more than 72 hours and has been and remains frozen solid, the product is no longer required to be relabeled from "Source Plasma (Human)" to "Source Plasma (Human) Salvaged." Data submitted to the agency demonstrate the satisfactory recovery of clotting factor concentrates from the plasma despite the temporary elevation of storage temperature. Interested persons were given until December 18, 1979, to submit written comments regarding the proposal.

Only one comment was received, and it supported the proposed change. The comment commended the agency "for recognizing that events such as power failures or freezer malfunctions can occur, but that plasma derivatives can be satisfactorily prepared from Source Plasma (Human) exposed to temperatures between −20° C to −5° C for less than 72 hours."

As a result of FDA's consideration of the proposal, the agency has eliminated as unnecessary the proposed requirement that Source Plasma (Human) suppliers notify plasma derivative manufacturers of episodes of elevated storage temperature. The data upon which the proposal was based show that frozen plasma subjected to an episode of elevated storage temperature of −20° C and −5° C for no more than 72 hours (due to, for example, freezer malfunction or power failure), and that has been and remains frozen solid, should still yield an acceptable amount of plasma derivative products compared with the yield from frozen plasma maintained continuously at −20° C. These data show that such a temporary episode of elevated temperature does not appreciably affect the safety, purity, potency, or effectiveness of derivatives prepared from the plasma. Accordingly, just as it is unnecessary to require the relabeling that this regulation will eliminate, it is also unnecessary to require that plasma derivative manufacturers be notified of such an episode of storage temperature elevation.

Under the final regulation, plasma derivative manufacturers who are interested in obtaining data concerning

the temporary storage of Source Plasma at elevated temperatures may do so. Source Plasma (Human) suppliers are required to maintain records of all such episodes of storage temperature elevation and to make the records available to the plasma derivative manufacturer or authorized FDA investigator under § 606.160 of the regulations upon request.

Accordingly, FDA is adopting the proposal with the revision described above and with additional minor editorial changes in the present regulation.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)), the Federal Food, Drug, and Cosmetic Act (secs. 501, 701(a), 52 Stat. 1041 as amended (21 U.S.C. 351, 371(a)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 640 is amended by revising § 640.76, to read as follows:

§ 640.76 Products stored or shipped at unacceptable temperatures.

(a) *Storage temperature.* (1) Except as provided in paragraph (a)(2) of this section, Source Plasma (Human) intended for manufacture into injectable products that is inadvertently exposed (i.e., an unforeseen occurrence in spite of compliance with good manufacturing practice) to a storage temperature warmer than −20° C and colder than +10° C may be issued only if labeled as "Source Plasma (Human) Salvaged." The label shall be revised before issuance, and appropriate records shall be maintained identifying the units involved, describing their disposition, and explaining fully the conditions that caused the inadvertent temperature exposure.

(2) Source Plasma (Human) intended for manufacture into injectable products that is exposed inadvertently (i.e., an unforeseen occurrence in spite of compliance with good manufacturing practice) to one episode of storage temperature fluctuation that is warmer than −20° C and colder than −5° C for not more than 72 hours is exempt from the labeling requirements of paragraph (a)(1) of this section, provided that the plasma has been and remains frozen solid. Appropriate records shall be maintained identifying the units involved, describing their disposition, explaining fully the conditions that caused the inadvertent temperature exposure, and documenting that the episode of temperature elevation did not exceed 72 hours, that the temperature did not rise to warmer than −5° C in storage, and that the plasma remained frozen solid throughout the period of elevated temperature. When requested, copies of the records shall be provided to the plasma derivative manufacturer.

(b) *Shipping temperature.* If Source Plasma (Human) for manufacture into injectable products is exposed inadvertently (i.e., an unforeseen occurrence in spite of compliance with good manufacturing practice) to a shipping temperature warmer than −5° C and colder than +10° C, the plasma derivative manufacturer shall label it "Source Plasma (Human) Salvaged." Appropriate records shall be maintained identifying the units involved, describing their disposition, and explaining fully the conditions that caused the inadvertent temperature exposure.

(c) *Relabeling.* If Source Plasma (Human) is required to be relabeled as "Source Plasma (Human) Salvaged" under paragraph (a)(1) or (b) of this section, the person responsible for the relabeling shall cover the original label with either (1) a complete new label containing the appropriate information or (2) a partial label affixed to the original label and containing the appropriate new information, which covers the incorrect information regarding storage temperature.

Effective date. January 5, 1981.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); secs. 501, 701(a), 52 Stat. 1047 as amended (21 U.S.C. 351, 371(a))

Dated: November 25, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-37643 Filed 12-4-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 1030

[Docket No. 80N-0099]

Radiological Health; Performance Standards for Microwave and Radio Frequency Emitting Products; Amendments to the Microwave Oven Standard; Measurement and Test Conditions

Correction

In FR Doc. 80-36873 appearing at page 79028 in the issue for Friday, November 28, 1980, make the following correction:

On page 79031, in the middle column, toward the end of the document, in the effective date paragraph, "November 28, 1981" should have read "November 30, 1981".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Mandatory Safety Standards, Underground Coal Mines; Deferral of Date on Which Self-Contained Self-Rescuers Are Required

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Final rules.

SUMMARY: The date on which self-contained self-rescuers are required in underground coal mines under 30 CFR 75.1714-1 is deferred to June 21, 1981.

DATES: This amendment is effective on December 5, 1980. Self-contained self-rescuers must be provided to miners and visitors by June 21, 1981.

ADDRESS: Mine Safety and Health Administration, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Joseph A. Lamonica, Acting Administrator for Coal Mine Safety and Health, Room 830, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, Telephone: (703) 235-9423.

SUPPLEMENTARY INFORMATION: On November 21, 1978, the Secretary of Labor published a final rule requiring coal mine operators to make available self-contained self-rescuers (SCSR's) to miners and visitors who go underground after December 21, 1980 (43 FR 54241).

Self-contained self-rescuers produce oxygen so that the user can escape from poisonous atmospheres during a mine emergency. They would replace or be used in conjunction with the traditional filter-type self-rescuer that is effective only against moderate concentrations of carbon monoxide. In the preamble to the rule, MSHA stated that it would undertake a program to evaluate the SCSR's in actual mine conditions during the phase-in period between the rule's publication and the deadline for compliance.

MSHA recognizes that uncertainty as to availability of approved SCSR's and as to the outcome of its evaluation of the devices has impeded the coal mining industry's ability to meet the December 21, 1980 deadline. Manufacturers have not yet produced a sufficient quantity of SCSR's because of delays in getting final approval for production models. Additionally, MSHA's program to evaluate SCSR's in actual mining conditions will not be completed in time to reasonably require the

implementation of the new requirements by the original December 21, 1980 deadline. MSHA expects its field evaluation to be completed within the near future and upon completion, reports of the results will be made available. Therefore, coal mine operators will not be required to make SCSR's available to miners and visitors until June 21, 1981.

MSHA's evaluation will provide operators with practical information regarding effective methods for the use and storage of SCSR's. Coal mine operators should use the time before the new deadline for compliance to utilize the evaluation reports, select the type of approved SCSR's that best suits their particular needs and make these improved devices available to their miners and visitors. MSHA will proceed with its plans to equip its inspection force with SCSR's.

The current requirement to provide filter-type self-rescuers and the training, inspection, testing, maintenance and repair requirements for such devices shall remain in effect during the six month extension period for providing SCSR's.

In view of the imminence of the deadline and the circumstances stated above, it is determined that it is impracticable and contrary to the public interest to provide advance notice and opportunity for public comment on this amendment.

Note.—It has been determined that this document does not contain a major rule requiring a Regulatory Analysis under Executive Order 12044 and the Department of Labor's final guidelines implementing the Executive Order (44 FR 5570, January 23, 1979).

Dated: December 2, 1980.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

§ 75.1714-1 [Amended]

For the reasons set out in the preamble, 30 CFR 75.1714-1 is amended by substituting the date, "June 21, 1981" for the phrase "[2 years from the effective date]" in paragraphs (a) and (b).

Authority: Sec. 508, Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, 83 Stat. 803 as amended by Pub. L. 95-164, 91 Stat. 1299 (30 U.S.C. 957).

[FR Doc. 80-37875 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD Directive 5400.7, DoD 5400.7-R]

DoD Freedom of Information Act Program

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule supplements the earlier published Part 286 of this title (DoD Directive 5400.7) which set forth policy regarding the DoD Freedom of Information Program; establishes and prescribes uniform procedures and requirements for DoD Components in implementing the Freedom of Information Act (5 U.S.C. 552).

EFFECTIVE DATE: November 3, 1980.

FOR FURTHER INFORMATION CONTACT: Colonel Robert I. Farris, Office of the Assistant Secretary of Defense (Public Affairs), Washington, D.C. 20301, Telephone 203-697-1180.

SUPPLEMENTARY INFORMATION: In FR Doc. 67-7604, appearing in the **Federal Register** on July 4, 1967 (32 FR 9666), the Department of Defense published Part 286 of this title, establishing the policy of the Department of Defense regarding the availability to the public of DoD information and implementing 5 U.S.C. 552. In FR Doc. 75-5181, appearing in the **Federal Register** on February 26, 1975 (40 FR 8190) and in FR Doc. 80-13043, appearing in the **Federal Register** on April 29, 1980 (45 FR 28323), the Office of the Secretary of Defense revised this Part. In FR Doc. 77-23004, appearing in the **Federal Register** on August 10, 1977 (42 FR 40552), the Department of Defense published a proposed rule to establish procedures for and to provide guidance to DoD Components handling public requests under the Freedom of Information Act (FOIA), and the public in obtaining records under the Act. Few and only minor public comments were received and considered. In the passage of time and as a result of experience gained in administering the FOIA program, the rule set forth below recasts but maintains the overall thrust of the proposed rule published in 1977. This rule shall have two purposes: (a) to revise Part 286 published April 29, 1980 (45 FR 28323) and to designate the sections 286.1 through 286.4 as Subpart A—Policy; and (b) by adding Subparts B through I which comprise the DoD regulation on the FOIA (DoD 5400.7-R).

Accordingly, 32 CFR Chapter I, Part 286, is amended by designating the sections 286.1 through 286.4 as Subpart A—Policy; by deleting section 286.5 and enclosures 1 through 6; and by adding Subparts B through I, reading as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—Policy

* * * * *

1. Remove § 286.5 and Enclosures 1 through 6.

Subpart B—General Provisions

Sec.

286.10 References.
286.11 Purpose and Applicability.
286.12 DoD Public Information.
286.13 Definitions.
286.14 Policy.

Subpart C—FOIA Reading Rooms

286.20 Requirements.
286.21 Indexes.
286.22 [Reserved].

Subpart D—Exemptions

286.30 General Provisions.
286.31 Exemptions.

Subpart E—For Official Use Only

286.40 General provisions.
286.41 Markings.
286.42 Dissemination and Transmission.
286.43 Safeguarding FOUO Information.
286.44 Termination, Disposal and Unauthorized Disclosure.

Subpart F—Release and Processing Procedures

286.50 General Provisions.
286.51 Initial Determinations.
286.52 Appeals.
286.53 Judicial Actions.
286.54 [Reserved].

Subpart G—Fee Schedule

286.60 General Provisions.
286.61 Collection of Fees and Fee Rates.
286.62 [Reserved].

Subpart H—Reports

286.70 Reports Control.
286.71 Triannual Report.
286.72 [Reserved].

Subpart I—Education and Training

286.80 Responsibility and Purpose.

Appendices

Appendix A—Unified Commands—Processing Procedures for FOI Appeals.
Appendix B—Addressing FOIA Requests.
Appendix C—Litigation Status Sheet.
Appendix D—Annual Report Format.
Appendix E—Other Reason Categories.
Appendix F—DD Form 2086, "Record of Freedom of Information (FOI) Processing Costs".
Appendix G—Format for Triannual Report.
Enclosure 1—DoD Freedom of Information Act Program Components.

Authority: 5 U.S.C. 552.

M. S. Healy,
OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.
December 2, 1980.

Subpart B—General Provisions

§ 286.10 References.

(a) Title 5, United States Code, Section 552.
(b) 32 CFR Part 286.
(c) Public Law 86–36, "National Security Information Exemption".
(d) 32 CFR Part 286a.
(e) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980.
(f) Title 5, United States Code, Section 551, "Administrative Procedures Act".
(g) 32 CFR Part 159.
(h) Title 35, United States Code, Sections 181–188, "Patent Secrecy".
(i) Title 43, United States Code, Section 2162. "Restricted Data and Formerly Restricted Data".
(j) Title 18, United States Code, Section 798, "Communication Intelligence".
(k) Title 18, United States Code, Section 3500, "The Jencks Act".
(l) DoD Directive 5200.20, "Distribution Statements on Technical Documents," September 24, 1970.
(m) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978.
(n) DoD Directive 7650.1, "General Accounting Office Comprehensive Audits," July 9, 1958.
(o) ACP–121 (United States Supplement 1).
(p) Title 44, United States Code, Chapter 33, "Disposal of Records".
(q) 32 CFR Part 288.
(r) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964.
(s) DoD 5000.12–M, "DoD Manual for Standard Data Elements," December 1979, authorized by DoD Directive 5000.12, April 27, 1965.
(t) DoD Instruction 5000.22, "Guide to Estimating Costs of Information Requirements," October 17, 1974.
(u) DoD Handbook 7220.9–H, "DoD Accounting Guidance Handbook," February 1, 1978, authorized by DoD Instruction 7220.9, July 12, 1971.

§ 286.11 Purpose and Applicability.

(a) The purpose of this Part is to provide policies and procedures for the DoD implementation of the Freedom of Information Act, § 286.10 (a) and (b), and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* (1) This Part applies to the Office of the Secretary of Defense (OSD) (which includes for the purpose of this Part the Organization of the Joint Chiefs of Staff, Unified Commands and OSD administrative support agencies), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at enclosure 1.

(2) The National Security Agency records are subject to the provisions of this Regulation, only to the extent the records are not exempt under Pub. L. 86–36 (§ 286.10(c)).

§ 286.12 DoD Public Information.

(a) *Public Information.* The public has a right to information concerning the activities of its government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA and denial would serve a significant, legitimate government purpose. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) *Control System.* A request for records that invoke the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation or under the Privacy Act, when the request is from the subject of the records requested.

§ 286.13 Definitions.

(a) *Definitions.* As used in this Part the following terms and meanings shall be applicable.

(b) *FOIA Request.* A written request for DoD records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, § 286, this Part, or DoD Component supplementing regulations or instructions.

(c) *Agency Record.* (1) The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

(2) The following are not included within the definition of the word "record":

(i) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(ii) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(iii) Commercially exploitable resources, including but not limited to, formulae, designs, drawings, maps and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

(iv) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(v) Anything that is not a tangible or documentary record, such as, an individual's memory or oral communication.

(vi) Personal notes of an individual not made available to other persons in an agency and not filed with agency records.

(vii) Information stored within a computer for which there is no existing computer program or printout.

(3) A record must exist and be in the possession or control of Department of Defense at the time of the request to be

considered subject to this Part. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(d) *DoD Component.* An element of the Department of Defense, as defined in § 286.10(b), authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or authorities and its own appellate authority.

(e) *Initial Denial Authority.* An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

(f) *Appellate Authority.* The head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

(g) *Administrative Appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

§ 286.14 Policy.

(a) *Compliance with the Freedom of Information Act.* DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the Public.* The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural Obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Part and any supplemental regulations published by the DoD Components.

(d) *Prompt Action on Requests.* When a member of the public complies with the procedures established in this Part for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. Requests by individuals for access to records about themselves shall be processed under the Privacy Act procedures, as implemented by § 286(a) outlined in this Part, provided such records are contained in a system of records and are retrievable by reference to the requester's name or other personal identifier. Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

(e) *Use of Exemptions.* Records that may be withheld under the exemptions outlined in § 286.30 of this Part shall be made available to the public when no significant, legitimate Government purpose is served by withholding them. Determination of significant and legitimate Government purpose is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

(f) *Public Domain.* Nonexempt records released under the authority of this Part are considered to be in the public domain. Exempt records released pursuant to this Part or other statutory or regulatory authority however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a Record.* A record must exist and be in the possession or control of the Department of Defense at the time of the request to be considered subject to this Part. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A DoD Component, however, may compile or create a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is less than the fee which would be charged for providing the existing record. Fee assessment for direct search and duplication associated with the request shall be in accordance with § 286.60(b).

(h) *Description of Requested Record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record—memorandum, title, index citation, subject area, date the record was created and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers only are provided in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(5) The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

(i) *Referrals.* (1) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. If the DoD Component that is consulted determines that the existence or nonexistence of any record of the DoD Component responsive to the request is in itself classified, the requester will be so notified. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) Whenever a record, or a portion of a record, is, after prior consultation, referred to another DoD Component or to a government agency outside of the Department of Defense for a release determination and direct response, the requester shall be given a description of the record referred, as furnished by the DoD Component that was consulted. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency or if the classification is derivative. Telephonic coordination with the DoD Component or outside agency shall be made prior to the referral.

(4) A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have as significant and as legitimate an interest in withholding the record that the DoD Component that created the record would have. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

(5) Within DoD, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. Then, the requester shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(6) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this Part. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

(7) Agencies outside the Department of Defense that are subject to the FOIA:

(i) A Component may refer an FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA and if the requester does not object. Otherwise the Component must respond to the request.

(ii) A DoD Component shall not honor any FOIA request for investigative, intelligence or any type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

(8) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(j) *Fee Assessment.* (1) Fees may not be used to discourage requests, and to this end FOIA fees are limited to standard charges for direct document search and duplication. Documents may be furnished without charge or at a reduced charge when the agency determines that waiver or reduction of the fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Based on this guidance, the Department of Defense has established a liberal fee schedule, that is outlined in § 286.60 of this Part.

(2) In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer, DoD Components shall adhere to the following procedures:

(i) If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver and if it appears that the direct search and reproduction costs associated with the request shall exceed the automatic waiver threshold, the request need not be processed and the requester shall be so informed.

(ii) If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver, then the specified amount or the automatic waiver threshold, whichever is greater, shall not be exceeded without the consent of the requester.

(iii) If the requester makes no declaration concerning fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction fees to be assessed shall exceed the automatic waiver threshold, the request shall not be processed until the requester is advised of anticipated charges and agrees to pay them.

(iv) Components may require payment of all or a portion of estimated fees before processing a request.

(v) Subsequent requests from persons who fail to discharge fee obligations need not be processed until previous obligations have been discharged or waived.

(k) *Authentication.* Records provided under this Part shall be authenticated with an appropriate seal whenever necessary to fulfill an official Government or other legal function. This service, however, is in addition to that required under FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $3.00 for each authentication.

(l) *Unified and Specified Commands.* (1) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (§ 286.10(e)); it authorizes and requires the Unified Commands to process FOI requests in accordance with § 286 and this Part. The Unified Commands shall forward directly to the Office of the Assistant Secretary of Defense (Public Affairs), OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix A.

(2) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

(m) *Records Management.* FOIA records shall be maintained and disposed of in accordance with DoD

Component disposition instructions and schedules.

Subpart C—FOIA Reading Rooms

§ 286.20 Requirements.

(a) *Reading Room.* Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of § 286.60 of this Part.

(b) *Material Availability.* The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, § 286.10(f), that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register.**

(3) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

§ 286.21 Indexes.

(a) *"(a)(2)" Materials.* (1) Each DoD Component shall maintain in each facility prescribed in paragraph 2–100 an index of materials described in paragraph 2–101 that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Part.

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in § 286.60 of this Part.

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(b) *Other Materials.* (1) Any available index of DoD Component material published in the **Federal Register**, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

§ 286.22 [Reserved]

Subpart D—Exemptions

§ 286.30 General Provisions.

(a) *General.* Records that meet the exemption criteria in § 286.31 of this Part may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

(b) *Significant and Legitimate Government Purpose.* An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no significant and legitimate government purpose would be served by withholding it under an applicable exemption. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this Part, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record.

§ 286.31 Exemptions.

(a) *FOIA Exemptions.* The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

Number 1. Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as 32 CFR 159. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in 32 CFR 159.21(e)(6) apply.

Number 2. Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

(1) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the

DoD Component to fulfill a legal requirement.

(2) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

Number 3. Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(1) National Security Agency Information Exemption, Pub. L. 86-36, Section 6 (§ 286.10(c)).

(2) Patent Secrecy, 35 U.S.C. 181-188 (§ 286.10(h)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(3) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (§ 286.10(i)).

(4) Communication Intelligence, 18 U.S.C. 798 (§ 286.10(j)).

Number 4. Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

Number 5. Except as provided in subsections b. through e., below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies as defined in 5 U.S.C. 552(e) (§ 286.10(a)) or within or among DoD Components.

(1) Examples include:

(i) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(ii) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(iii) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(iv) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(v) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the government's negotiating position or other commercial interests.

(vi) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(viii) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(2) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this Part.

(3) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

Number 6. Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(3) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with 32 CFR 286a (§ 286.10(d)).

(4) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

Number 7. Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

(1) This exemption applies, however, only to the extent that release of a record or portion of a record would:

(i) Interfere with enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or to an impartial adjudication.

(iii) Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(iv) Disclose the identity of a confidential source.

(v) Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(vi) Disclose investigative techniques and procedures not already in the public domain and requiring protection against public disclosure to ensure their continued effectiveness.

(vii) Endanger the life, physical safety, or well-being of law enforcement personnel or their families.

(2) Examples include:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law, such as, the Jencks Act, 18 U.S.C. 3500, (§ 286.10(k)) is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by 32 CFR Part 286a (§ 286.10(d)).

Number 8. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial instructions.

Number 9. Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart E—For Official Use Only

§ 286.40 General Provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. *No other material shall be considered or marked "For Official Use Only"* (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(b) *Prior FOUO Application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate government purpose is served by withholding the record or portions of it.

(c) *Historical Papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (§ 286.10(a)).

(d) *Time To Mark Records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(e) *Distribution Statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5200.20 (§ 286.10(l)) shall bear that statement and shall not be marked FOUO.

§ 286.41 Markings.

(a) *Location of Markings.* (1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(2) Withing a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information Exempt From Mandatory Disclosure under the FOIA. Exemptions . . . apply.

§ 286.42 Dissemination and Transmission.

(a) *Release and Transmission Procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DOD Components and between officials of DOD Components and DOD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DOD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked. "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DOD Directive 5400.4 (§ 286.10(m)). Release to the General Accounting Office (GAO) is governed by DOD Directive 7650.1 (§ 286.10(n)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO Information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

(c) *Electrically Transmitted Messages.* Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP–121 (U.S. Supp. 1) (§ 286.10(o)) for FOUO information.

§ 286.43 Safeguarding FOUO Information.

(a) *During Duty Hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel.

(b) *During Nonduty Hours.* At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86–36 (§ 286.10(c)) shall meet the safeguards outlined in any system notice for that group of records.

§ 286.44 Termination, disposal and unauthorized disclosures.

(a) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with disposal standards established under 44 U.S.C. CH 33 (§ 286.10(p)), as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized Disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart F—Release and Processing Procedures

§ 286.50 General provisions.

(a) *Public Information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the FOIA may be denied only when:

(i) The record is subject to one or more of the exemptions in § 286.30 of this Part, and a significant and legitimate government purpose is served by withholding it.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(2) Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B.

(b) *Requests from Private Citizens.* The provisions of the FOIA are reserved for persons with private interests as opposed to governments seeking information. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in § 286.14(f).

(c) *Requests from Government Officials.* Requests from officials of federal, state, or local governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

(d) *Privileged Release to Officials.* (1) Subject to the provisions of 32 CFR 159 (§ 286.10(g)), applicable to classified information, DoD Directive 5400.11 (§ 286.10(d)), applicable to personal privacy, or other applicable law, records exempt from release under § 286.30 of this Part may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, state or federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To Congress, in accordance with DoD Directive 5400.4 (§ 286.10(m)).

(ii) To the federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(iii) To other federal agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

(iv) To state and local officials, as determined by the head of a DoD Component or designee.

(2) DoD Components shall inform officials receiving records under the provisions of § 286.50(d)(2) that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

§ 286.51 Initial Determinations.

(a) *Initial Denial Authority.*

(1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) The initial determination of whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this Regulation is applicable and should be invoked.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for Not Releasing a Record.* There are six reasons provided by the FOIA for not complying with a request for a record. They are:

(1) The information requested is not a record within the meaning of the FOIA and this Part.

(2) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(3) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this Part or DoD Component supplementing regulations.

(4) The DoD Component determines through knowledge of its files and reasonable search efforts that it does not hold the requested record. (A "no record" determination is not considered a denial; therefore, an appeal is not appropriate.)

(5) The DoD Component determines that the request should be handled under the provisions of the Privacy Act.

(6) The record is denied in accordance with procedures set forth in the FOIA and this Part.

(c) *Denial Tests.* To deny a requested record that has been located, a DoD Component must determine that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in § 286.30 of this Part.

(2) A significant and legitimate government purpose is served by withholding the record.

(d) *Reasonably Segregable Portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not possible to reasonably segregate meaningful portions of the record for release.

(e) *Response to Requester.* (1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 workings days after receipt of the request by the official designated to respond.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based on the significant and legitmate government purpose served by withholding the record. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The response to the requester should contain information concerning the fee status of the request. Generally, the information shall reflect one or more of the following conditions:

(i) All fees due have been received.

(ii) Fees have been waived because they fall below the automatic fee waiver threshold.

(iii) A request for waiver has been denied.

(iv) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

(v) Fees due in a specified amount have not been received.

(5) The explanation of the substantive basis for a denial shall include both specific citation of the statutory exemption applied under provisions of this Regulation and a discussion of the significant and legitimate government purpose served by invoking an exemption. Merely referring to a classification or, to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(f) *Extension of Time.* (1) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(i) The requested record is located in whole or in part at places other than the office processing the request.

(ii) The request requires the collection and evaluation of a substantial number of records.

(iii) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this Part or should be released as a matter of discretion.

(2) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component or in accordance with regulations of the DoD Component or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

(3) In these unusual cases where the statutory time limits cannot be met, and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester, with notification that he may treat the delay as an initial denial with a right to appeal, or that the requester may agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made.

(4) As an alternative to the taking of formal extensions of time as described in § 286.51(f)(1), (2) and (3) above, the negotiation by the cognizant, FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected Requests.* Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

(h) *Records of Non-U.S. Government Source.* When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information, clearly identified as having been provided by a non-U.S. Government source, the source of the record or information normally shall be notified promptly of that request and afforded reasonable time to present any objections concerning the release unless it is clear that there can be no valid bases for objection. If for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known.

(i) *File of Initial Denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(j) *Special Mail Services.* DoD Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(k) *Receipt Accounts.* The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts except receipts for industrially funded activities. Industrially funded activity FOIA receipts shall be deposited to the applicable industrial fund.

(1) *Receipt Account 2252, Sale of Publications and Reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms, that meet the Receipt Account Series 2250 description found in Federal Account Symbols and Titles.

(2) *Receipt Account 2419.3, Fees and Other Charges for Services, Freedom of Information Act.* This account is used to deposit search fees and fees for duplicating records to satisfy requests that could not be filled with existing publications or forms.

§ 285.52 Appeals.

(a) *General.* If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt and its withholding justified for a significant and legitimate government purpose, that decision may be appealed by the requester in writing to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. In addition, the DoD Component may impose a reasonable time limit, which may not be more than 45 days, for the requester to file an appeal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

(b) *Time of Receipt.* FOI appeal has been received by a DoD Component when it reaches the office of the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time Limits.* (1) The requester must file an appeal so that it reaches the appellate authority no later than 45 working days after the requester receives notification of an initial denial. At the conclusion of this period, the case

may be considered closed. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt.

(d) *Delay in Responding to an Appeal.* (1) If additional time is needed due to the unusual circumstances described in § 286.51(f), the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester in writing the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.51(f), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Response to the Requester.* (1) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, as a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption invoked under provisions of this Part and the significant and legitimate government purpose served by its withholding.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing executive order and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(v) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be brought to the attention of the Freedom of Information Committee of the Department of Justice through the Office of Information Law and Policy.

§ 286.53 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, now do they bind DoD to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and set forth in this Part.

(b) *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of Proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the Court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States Government Source Information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *Litigation Status Sheet.* Freedom of Information managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secertary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs). A revised Litigation

Status Sheet shall be provided at each stage of the litigation.

§ 286.54 [Reserved]

Subpart G—Fee Schedule

§ 286.60 General provisions.

(a) *Application.* The fees described in this Part apply to FOIA requests. They reflect direct search and duplication costs, collection of which are permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business nor are they meant as a substitute for any other schedule of fees, such as 32 CFR Part 288 (§ 286.10(q)).

(b) *Fee Assessment.* (1) Minimum fees shall not be charged.

(2) When direct search and duplication costs for a single FOIA request total less than $30.00, fees should be waived automatically. The DoD Components, however, may set aside the automatic waiver provision when, on the basis of good evidence, the Component can demonstrate that waiver of fees is not in the public interest. Multiple requests from a single requester or from those acting in behalf of a single requester in an effort to take advantage of the waiver may create a situation in which waiver should be denied by the Component.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. The following circumstances, however, describe the most common circumstances in which waiver or reduction of fees are most likely to be warranted.

(i) No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.

(ii) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records including additional information not requested.

(iii) The records are to be made available in response to a news media requester whose requests under this regulation are reasonable in scope and frequency.

(iv) The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.

(v) A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

(c) *Computation of Fees.* The fee schedule contained in this Part is used to compute the search and duplication costs associated with processing a given FOIA request. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

§ 286.61 Collection of fees and fee rates.

(a) *Collection of Fees.* Collection of charges and fees need not be made in advance of rendering the service unless the costs are expected to exceed the fee waiver threshold and the requester has not indicated a willingness in writing to pay. It frequently is more practical to collect charges and fees at the time of providing the service or property to the recipient when the requester specifically states that the cost involved shall be acceptable or acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement only when the requester has not agreed in writing to pay the anticipated fee or has not honored previous commitments to pay fees that were owed an agency or component.

(b) *Search Fees.* (1) Manual Search:

Type	Grade	Hourly rate [1]
Clerical	E9/GS8 and below	8
Professional	01-06/GS9—GS-15	16
Executive	07/GS16/ES1 and above	26

[1] Dollars.

(2) Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(3) Actual cost of transporting records or personnel to the search site may be included.

(c) *Duplication Fees.*

Type and Cost Per Page (Cents)

Printed Material—01
Office Copy—10
Microfiche—25

(d) *Audiovisual Documentary Materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(e) *Other Records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

§ 286.62 [Reserved]

Subpart H—Reports

§ 286.70 Reports control.

(a) *General.* The reporting requirement outlined in this Part is assigned Report Control Symbol DD-PA(TRA&A) 1365.

Annual Report

(b) *Reporting Time.* Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (§ 286.10(r)). The standard data elements are contained in DoD 5000.12-M (§ 286.10(s)).

(c) *Annual Report Content.* (1) The annual report shall contain the following: (i) *Item 1.* Report the number of public requests (a single FOIA request) completed. Report the number of reportable requests, the number in which a statutory exemption was invoked, and the number in which some other authority resulted in the denial of the request.

Note.—A reportable request is that portion of an FOIA request resulting in a single record or group of records pertaining to one general subject area being acted upon by one IDA who concludes that a single type of determination applies. Example: A single public request that requires the action of three IDAs in determining if a record under their jurisdiction is to be released would be counted as three reportable requests, but one public request. Records released by two IDAs in response to one public request would be counted as two reportable requests.

(ii) *Item 2.* Provide statistics on the specific authorities—statutory exemptions, statutes, and categories of other reasons used in the totals above.

(A) *Item 2(a).* Show the number of times each of the nine statutory exemptions was invoked (the total may not agree with Item 1 because of situations where two or more exemptions were cited for one record).

(B) *Item 2(b).* List the statutes cited when invoking Exemption 3 and the number of times each was cited.

(C) *Item 2(c).* Show the number of times each category of other reasons was cited in response to the public. Five such reportable categories have been established in Appendix E to this Part (the total will equal the number reported in Item 1).

(iii) *Item 3.* Provide the number of IDAs authorized. Then list the names and titles or positions of persons cited

as IDAs, followed thereafter in two subcolumns by the number of times each person cited exemptions or other authority categories (the vertical columnar totals must match Item 1).

(iv) *Item 4.* Provide the number of appeals that, upon review, were granted in part, or denied, followed by a total of those three numbers.

(v) *Item 5.* Repeat the three statistical requirements of Item 2 for the appeals that were granted in part or denied.

(vi) *Item 6.* Repeat item 3 for appellate authorities including both subcolumnar statistics.

(vii) *Item 7.* When a court determines that DoD Component records were improperly withheld and issues a finding raising questions on the actions of DoD Component personnel, provide a copy of each such court opinion or order; a copy of the Office of Personnel Management finding and recommendation on each such proceeding; and a report of any disciplinary action taken against the person who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(viii) *Item 8.* List changes or revisions of DoD Component rules or regulations affecting the implementation of FOIA followed by the **Federal Register** reference (number, date, and page) that announced the change or revision to the public. Append a copy of each such change or revised rule or regulation.

(ix) *Item 9.* The amount of fees collected from the public will be reported triannually to OASD(PA); thus, duplicate annual reporting by DoD Components is not required.

(x) *Item 10.* The following subitems have been established by Congressional request as indicative of DoD Component efforts to administer FOIA.

(A) *Item 10(a).* List all new categories of records now being released in whole or in part under FOIA.

(B) *Item 10(b).* The costs of administering the FOIA Program shall be reported triannually to OASD(PA); thus, duplicate annual reporting by Components is not required. The triannual reports shall be used by the OASD(PA) to portray annual DoD Component and DoD-wide totals.

(C) *Item 10(c).* Report the number of times unusual circumstances required an extension of normal processing time limits, and break down that total by circumstances and by court action. Append a copy of each court opinion or order involving the question of time limits for processing.

(D) *Item 10(d).* Append a copy of all unpublished (not announced in the **Federal Register**) instructions to DoD Component personnel, memoranda, or other issuances that address procedures, definitions, or interpretations of the FOIA promulgated during the year at Major Command level of the DoD Component. Report the number of documents published and whether or not they are publicly available, together with the legal basis for nondisclosure, should that be the case.

(E) *Item 10(e).* Any other information, opinion, or recommendations considered pertinent by the DoD Component.

(xi) *Item 11.* Report descriptions of FOI instructional and educational efforts undertaken by the DoD Component directed toward DoD Component personnel or the public.

(xii) Statistical data required by the items listed above shall be prepared in the format shown in Appendix D.

§ 286.71 Triannual report.

(a) *General.* A portion of the annual reporting requirements has been selected for more frequent reporting to provide management data at intermediate DoD Components and DoD levels. The data selected fall into three areas: (1) costs attendant to administration of the FOIA program, (2) the amount collected from the public, and (3) the number of reportable requests and appeals.

(b) *Time of Report.* Each DoD Component shall prepare statistics triannually (Jan-Apr, May-Aug, Sept-Dec) and, using the outline provided below, report these data to the ASD(PA) on or before 30 days after the close of each 4-month period. The use of DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost," to maintain a record of the cost of each FOIA case shall provide the data needed for compiling the data in this report.

(c) *Triannual Report Outline.* (1) The Triannual Report shall include the following: Reporting Activity: Period of Report:

(i) Cost of Routine Requests Processed: No. of reportable requests × (cost factor per request) $———

(ii) Personnel Costs (Civilian and Military): (A) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade: ——— Cost: $———

(B) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

Search Time Costs: ———

Review and Excising: ———

Coordination and Approval/Denial Decision Costs: ———

Correspondence and Form Preparation: ———

Other Activity Costs: ———

Total Manhour Costs: $———

(C) Application of Overhead: (Subtotal a) + (Subtotal b) × (overhead rate): $———

Total of Direct Personnel Costs and Overhead: $———

(iii) Other Case Related Costs:

(A) Computer $———

(B) Office Copy Reproduction $———

(C) Microfiche Reproduction $———

(D) Cost of Printed Records $———

Total of Other Costs: $———

(iv) Other Operating Costs:

(A) Reporting Costs [1]

Operational ———

User ———

Overhead ———

(([1]) + ([2]) × (overhead rate)) ——— $———

(B) Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost. $———

(Subtotal a) + (Subtotal b) $———

(v) Summary:

(A) Total Costs of Sections 1 through 4, above $———

(B) Amount Collected from Requesters this Reporting Period: Search ——— Copy ——— Total: $———

(C) No. of Requests Processed During this Reporting Period: Reportable Requests ——— Appeals ——— Total: $———

(2) A copy of DD Form 2086, "Record of Freedom of Information (FOI) Processing Costs," is at Appendix F.

(3) Format and instructions for the Triannual report are at Appendix G.

§ 286.72 [Reserved]

Subpart I—Education and Training

§ 286.80 Responsibility and purpose.

(a) *Responsibility.* The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this Part. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, developing a thorough understanding of the procedures outlined in this Part.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving

[1] See DoD Instruction 5000.22 (§ 286.10(t)). In the report for the last 4-month period (Sept-Dec) of each year, include the costs attributable to the Annual Report.

the interaction with members of the public and improving the public trust in the Department of Defense.

(c) *Scope and Principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this Part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this Part.

(2) Instruct personnel, who act in FOI matters, concerning the provisions of this Part, advising them of the legal hazards involved and the the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure unformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD (Public Affairs).

(e) *Uniformity of Legal Interpretation.* In accordance with Subpart A of this Part (§ 286.10(b)), the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A—Unified Commands—Processing Procedures for FOI Appeals

1. *General.* a. In accordance with Subpart A of this Part (§ 286.10(b)), and this Part the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3 (§ 286.10(c)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with Subpart A of this Part (§ 286.10(b)) and to forward directly to the Office of the Assistant Secretary of Defense (Public Affairs) all correspondence associated with the appeal of an initial denial for information under the provisions of the Freedom of Information Act (FOIA).

2. *Processing Procedures.* A request for a record under the FOIA may be denied only upon determination that:

(a) The record is subject to one or more of the exemptions set forth in § 286.30 of this Part and a significant and legitimate government purpose is served by the withholding.

(b) The record cannot be found because it has not been described with sufficient particularity to enable a responsible authority to locate it with a reasonable amount of effort.

(c) The requester has unreasonably failed to comply with the procedural requirements imposed by this Part.

3. *Responsibilities of Commands.* Unified Commanders in Chief shall: (a) Designate the officials authorized to deny initial FOI requests for records.

(b) Designate an office as the point-of-contact for FOI matters.

(c) Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

(d) Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of Department of Defense, if required, is authorized.

(e) Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

(f) Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

(g) Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

(h) State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the ASD(PA) the Pentagon, Washington, D.C. 20301.

(i) Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

4. *Fees for FOI Requests.* The fees charged for requested records shall be in accordance with § 286.60 of this Part.

5. *Communications.* Excellent communication capabilities currently exist between the Office of the ASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

6. *Reporting Requirements.* a. The Unified Commands shall submit to the ASD(PA) triannual reports and an annual report. The instructions for these two reports are outlined in § 286.70 of this Part.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD-PA(TRA&A) 1365.

c. The triannual reports for the periods January-April, May-August, September-December are required within 30 days after the close of the reporting period. The first report is due for the period May-August 1980, arriving at the Office of the ASD(PA) not later than September 30, 1980. This reporting requirement is assigned Report Control Symbol DD-PA (TRA&A) 1365.

Appendix B—Addressing FOIA Requests

1. *General.* a. The Department of Defense includes the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, the Military Departments, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

b. The Department of Defense does not have a central respository for DoD records. FOI requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOI requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. *Listing of DoD Component Addresses for FOI Requests.* a. *Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff.* This Component includes the Office of the Secretary of Defense, Office of the Deputy Secretary of Defense, Organization of the Joint Chiefs of Staff, Under Secretary of Defense for Policy, Under Secretary of Defense for Research and Engineering, Assistant Secretaries of Defense, General Counsel of the Department of Defense, Deputy Under Secretary of Defense (Policy Planning), Deputy Under Secretary of Defense (Policy Review), Assistant to the Secretary of Defense (Atomic Energy), Assistant to the Secretary of Defense (Legal Affairs), Director of Defense Advanced Research Projects Agency, Director of Defense Audit Service, Director of Defense Audiovisual Agency, Director of Defense Security Assistance Agency, Director of Net Assessment, Director of Office of Civilian Health and Medical Program of the Uniformed Services, Director of Office of Dependents Schools (including Overseas Schools), Deputy Advisor on NATO Affairs, Inspector General for Defense Intelligence, President of the Uniformed Services University of the Health Sciences, President of National Defense University (including the National War College and the Industrial College of the Armed Forces), Commandant of the Defense Systems Management College, Commandant of Armed Forces Staff College. All Freedom of Information requests concerning records of these activities should be sent to: Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301.

b. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR 518.17. Send requests to HQDA (DAAG-AMR-S), Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20314, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records desired.

c. *Department of the Navy.* Navy and Marine Corps records may be requested from

any Navy or Marine Corps activity by addressing a letter to the commanding officer and clearly indicating that it is a FOI request. Send requests to Chief of Naval Records Management Division (OP-09B1), Room 5E-613, Pentagon, Washington, D.C. 20350, for records of the Headquarters, Department of the Navy, or if there is uncertainty as to which Navy or Marine Corps activity may have records sought.

d. *Department of the Air Force.* Air Force records may be requested from the Commander (ATTENTION: DADF) of any Air Force installation, major command, or separate operating agency, or from the Headquarters, United States Air Force. Requesters should send FOI requests to HQ USAF/DADF, Washington, D.C. 20330, for Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records desired.

e. *Defense Communications Agency (DCA).* DCA records may be requested from any DCA field activity or from its headquarters. FOI requests may be addressed to Headquarters, Defense Communications Agency (Code 105), Washington, D.C. 20305.

f. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, Cameron Station, Alexandria, Va. 22314, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

g. *Defense Intelligence Agency (DIA).* FOI requests for DIA records may be addressed to Defense Intelligence Agency (RTS-2A), Washington, D.C. 20301.

h. *Defense Investigative Service (DIS).* All FOI requests for DIS records should be sent to the Office of Information and Legal Affairs Defense Investigative Service (D0020), 1900 Half St., S.W., Washington, D.C. 20314.

i. *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency (DLA-XA), Cameron Station, Alexandria, Virginia 22314, for records of its headquarters or DLA field activities if the record is known to be at the field location

j. *Defense Mapping Agency (DMA).* FOI requests for DMA records may be sent to the Defense Mapping Agency, Naval Observatory, Building 56, 34 Massachusetts Avenue, N.W., Washington, D.C. 20305.

k. *Defense Nuclear Agency (DNA).* FOI requests for DNA records may be sent to Defense Nuclear Agency, Public Affairs Office, Washington, D.C. 20305.

l. *National Security Agency (NSA).* FOI requests for NSA records may be sent to the National Security Agency, ATTN: Freedom of Information Office, Fort George G. Meade, MD 20755.

3. *Other Addresses.* a. *Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).* FOI requests for CHAMPUS records may be sent to the Director, OCHAMPUS, Denver, Colorado 80240.

b. *National Guard Bureau.* FOI requests for National Guard Federal records may be sent to any State Guard unit or to the National Guard Bureau (NGS-DA), Room 2C-362, Pentagon, Washington, D.C. 20301.

c. *Miscellaneous.* If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Director, Freedom of Information and Security Revenue, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301.

Appendix C—Litigation Status Sheet

1. Case Number [1]
2. Requester
3. Document Title or Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number[1]
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number[1]
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

[1] Number used by component for reference purposes.

Appendix D.—*Annual Report Format*

Item 1

Initial Determinations Resulting in not Providing all or a Portion of Record Requested

	Total Demands		*Reasons*	
Reporting* Activity	Completed Public Requests	Completed Reportable Requests	Statutory Exemption	+ Other = Total

Item 2(a)

Exemptions Invoked on Initial Determinations

	Exemption by Number (552(b))									
Reporting* Activity	1	2	3	4	5	6	7	8	9	Total

Item 2(b)

Statutes Invoked on Initial Determinations

Reporting* Activity	Statute	Number of Times

Item 2(c)

Other Reasons

Reporting* Activity	Category*	Total

1 2 3 4 5

Item 3

Initial Denial Officials by Participation

A. Total IDAs authorized:
B. IDAs involved in adverse determinations

Name*	Title	No. of Instances of Participation	
		Exemptions	*Other*

Item 4

Number of Appeals and Results

Reporting* Activity	Number of Appeals			
	Granted	*Granted in Part*	*Denied*	*Total*

Item 5(a)

Exemptions Invoked on Appeal Determinations

Exemptions by Number (522(b))

Reporting* Activity	1 2 3 4 5 6 7 8 9	Total

Item 5(b)

Statutes Invoked on Appeal Determinations

Reporting* Activity	Statute	Number of Times

Item 5(c)

Other Reasons Cited on Appeal Determinations

Reporting* Activity	Category*	Total

1 2 3 4 5

Item 6

Participation of Appellate Authorities
(those responsible for denials in whole or in part)

Name*	Title	No. of Instances of Participation	
		Exemptions	*Other*

Item 7

Court Opinions and Action Taken

Item 8

FOIA Implementation Rules or Regulations

Reporting* Activity	Document Identification	Fed. Reg. Ref.

Item 10A

Availability of Records
(New categories of segregable portions of records now being released)

Item 10C

Time Limit Extensions by Activity

Reporting* Activity	I Unusual Circumstances			II and III Court	
	Location	Volume	Consultation	Involvement	Total

Item 10D

Internal Memoranda

(Including Directives not Published in FEDERAL REGISTER)

Reporting* Activity	No. of Memoranda	No. Available to Public

Item 10E (Optional)

Other information (opinions) or recommendations on administering FOIA

Item 11

FOIA Instructional and Educational Efforts

NOTE.—Items marked with an asterisk (*) have been registered in the DoD data element program.

Appendix E—Other Reason Categories

1. *Transferred Requests*

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one DoD Component to another.

2. *Lack of Records*

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. *Failure of Requester to Reasonably Describe Record*

This category is specifically based on Section 552(a)(3)(a) of the FOIA (§ 286.10(a)).

4. *Other Failures by Requesters to Comply with Published Rules or Directives*

This category is based on Section 552(a)(3)(b) of the FOIA (§ 286.10(a)) and includes instances of failures to follow published rules concerning time, place, fees, and procedures.

5. *Request Withdrawn by Requester*

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

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APPENDIX F

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST			SEE INSTRUCTIONS ON BACK OF PAGE
1. REQUEST NO.	2. TYPE OF REQUEST ☐ INITIAL ☐ APPEAL	3. DATE COMPLETED (yr., mo., day)	

4. CLERICAL HOURS (E-9/GS-8 AND BELOW)	TOTAL HOURS		HOURLY RATE		COST
SEARCH				*	
REVIEW/EXCISING					
CORRESPONDENCE AND FORMS PREPARATION		X	$ 8.00	=	
OTHER ACTIVITY					

5. PROFESSIONAL HOURS	TOTAL HOURS		HOURLY RATE		COST
SEARCH				*	
REVIEW/EXCISING					
COORDINATION/APPROVAL/DENIAL		X	$ 16.00	=	
OTHER ACTIVITY					

6. EXECUTIVE HOURS (O-7/GS-16 AND ABOVE)	TOTAL HOURS		HOURLY RATE		COST
REVIEW/EXCISING					
COORDINATION/APPROVAL/DENIAL		X	$ 26.00	=	

7. COMPUTER SEARCH	TOTAL HOURS		HOURLY RATE		COST
MACHINE HOURS		X		= *	

8. OFFICE COPY REPRODUCTION	NUMBER		RATE		COST
PAGES REPRODUCED		X	.10	= *	

9. MICROFICHE REPRODUCTION	NUMBER		RATE		COST
MICROFICHE REPRODUCED		X	.25	= *	

10. PRINTED RECORDS	TOTAL PAGES		RATE		COST
FORMS				*	
PUBLICATIONS		X	.01	= *	
REPORTS				*	

11. *For FOI Office Use Only*

a. SEARCH FEES PAID		e. TOTAL COLLECTABLE COSTS	*
b. COPY FEES PAID		f. TOTAL PROCESSING COSTS	
c. TOTAL PAID		g. TOTAL CHARGED	
d. DATE PAID (yr., mo., day)		h. FEES WAIVED/REDUCED	☐ Y ☐ N

* *Chargeable to the Requester.*

DD FORM 1 JAN 80 2086

Instructions

Purpose: This form is used to record costs associated with the processing of a Freedom of Information request.

1. **Request Number**—First two digits will express CY followed by dash (—) and Component's request number, i.e., 79–001.

*2. **Type of Request**—Check the appropriate block to indicate initial request or appeal of a denial.

*3. **Date Completed**—Enter year, month and day, i.e., 79/06/21.

*4. **Clerical Hours**—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search—Time spent in locating from the files the requested information.

Review/Excising—Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence & Forms Preparation—Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity—Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester. Further discussion of chargeable fees is found in Enclosure 6, DoD Directive 5400.7.

*5. **Professional Hours**—For each applicable acitivity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising, and Other Activity—See explanation above.

Coordination/Approval/Denial—Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester.

*6. **Executive Hours**—For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising and Coordination/Approval/Denial—See explanation above.

—Multiply the time in the total hours column in each cateogry by the hourly rate and enter the cost figures for each category.

*7. **Computer Search**—Enter the time to the nearest 15 minutes in the total hours column.

—Multiply by the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

*8. **Office Copy Reproduction**—Enter the number of pages reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*9. **Microfiche Reproduction**—Enter the number of microfiche copies reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*10. **Printed Records**—Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms).*

Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

—Multiply the total number of pages in each cateogry by the rate per page and enter cost figures. The entire cost of each category is chargeable to the requester.

11. **For FOI Office Use Only—**

a. **Search Fees Paid**—Enter total search fees paid by the requester.

b. **Copy Fees Paid**—Enter the total of copy fees paid by the requester.

c. **Total Paid**—Add search fees paid and copy fees paid. Enter total in the total paid block.

*d. **Date Paid**—Enter year, month and day, i.e., 79/10/24, the fee payment was received.

e. **Total Collectable Costs**—Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester.

f. **Total Processing Costs**—Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

g. **Total Charged**—Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

*h. **Fees Wavied/Reduced**—Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Y" block for Yes or an "X" in the "N" block for No.

Note.—All items marked with an asterisk; (*) have been registered in the DoD Data Element Standardization Program (DoD Manual 5000.12M). Items 4, 5 and 6 were registered under data element "Type of FOI Manpower Category". The entries Search, Review/Excising, Correspondence & Forms Preparation, Coordination/Approval/Denial, and Other Activity have been registered under the data element "FOI Manpower Activity Category."

Appendix G—Format for Triannual Report

Reporting Activity:*
Period of Report:
A. Cost of Routine Requests Processed: No. of Reportable Requests × (cost factor per request) $———
B. Personnel Costs (Civilian and Military):
(1) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade:
Cost: $———
(2) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:
(a) Search Time Costs: ———
(b) Review and Excising: ———
(c) Coordination and Approval/Denial Decision Costs: ———
(d) Correspondence and Form Preparation Costs: ———
(e) Other Activity Costs: ———
Total Manhour Costs: $———
(3) Application of Overhead: (Sub-total A) + (Sub-total B) × (overhead rate): $———
Total of Direct Personnel Costs and Overhead: $———
C. Other Case Related Costs:
(1) Computer* $———
(2) Office Copy Reproduction* $———
(3) Microfiche Reproduction* $———
(4) Cost of Printed Records* $———
Total of Other Costs: $———
D. Other Operating Costs:
(1) Reporting Costs [1]
(a) Operational ———
(b) User ———
(c) Overhead ((a) + (b) × (overhead rate))
———
$———
(2) Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost. $———
(Sub-total (1)) + (Sub-total (2))
$———

[1] See DoD Instruction 5000.22 (§ 286.10(t)). In the report for the last four-month period (Sept–Dec) of each year, include the costs attributable to the Annual Report.

E. Summary

(1) Total Costs of Sections A through D above $———

(2) Amount Collected from Requesters this Reporting Period: Search ——— Copy ——— Total: $———

(3) No. of Requests Processed During this Reporting Period: Reportable Requests ——— Appeals ——— Total: ———

Note.—Items marked with an asterisk (*) have been registered in the DoD Data Element Program.

Instructions for Triannual FOI Report

1. *General*

a. To accomplish FOI cost reporting, each reporting activity must, first, determine whether sufficient repetitive requests are available to develop an average cost factor for these requests; second, establish which employees devote a sufficient percentage of their time to FOI duties to calculate their involvement in manyears; third, accumulate data on time (manhours) and costs involved in each case processed; and fourth, keep track of operating costs of the FOI Program. DD Form 2086 (Appendix F) should be used to accumulate case data.

b. Only those requests processed under the FOI Act shall be costed and reported. The provision to the public of unclassified information, documents, and forms as part of normal service, in accordance with previously established criteria or the Privacy Act, is excluded from this reporting requirement.

2. *Section A*

Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised that costs are comprehensive, to include overhead, yet not duplicated elsewhere in the report.

3. *Section B*

a. Personnel costs are reported in two ways. Section B. (1) uses a manyear/wage type of costing by grade that relieves individuals primarily those involved in planning, program management, or administrative handling from accounting for their time by manhours.

Sample Computation [1]

[Air Force]

Grade/step	No.		⅓ annual wage		Percent of time		Cost
0-4	1	×	$7,697	×	25	=	$1,924
0-3	1	×	6,459	×	50	=	3,230
GS-9(5)	1	×	4,844	×	100	=	4,844
GS-4(3)	1	×	2,701	×	25(2)	=	1,350
					225		11,348

Man-years = 225 – 100 – 3 = 0.75

[1] (a) Military Grades—use DoD Accounting Guidance Handbook (DoD 7220.9-H, Sec. 252 (§ 286.10(u)).
(b) Civilian Grades—use Office of Personnel Management Salary Table.

b. Use of one-third the annual wage and dividing manyears by three is required in this triannual report. Delete the computation.

c. Section B. (2) accounts for all other personnel involvement by manhours in particular activities associated in request processing as captured on DD Form 2086 (Appendix F). At the end of the reporting period, determine the total hourly data for each activity from all forms for the 4-month period and add totals into the five areas. It is suggested that hours and fractions thereof be added rather than dollar amounts. The use of standard fee schedule rates for each activity simplifies mathematical calculations and also allows these data to be compared to amounts collected. Executive manhours will likely be restricted to (2) (b) and (c) of Section B. (2)

Example Computation:

Clerical Search hours 2071.75 × $8.00 = $16,574.00.

Professional Search hours 910.20 × $16.00 = $14,563.20.

(1) Search time costs = $31,137.20.

d. Section B. (3) applies overhead to the direct manyear/manhour costs previously totaled above. The overhead rate includes the costs of supervision, space, and administrative support. Some reporting activities may have their own overhead rate (or will choose to develop one) based on cost experience. In the event that no such rate is available, an overhead rate of 25 percent may be used to produce an estimate of overhead costs. Include the rate used in the report.

4. *Section C*

Add the dollar amounts for each type of cost as recorded on DD Form 2086 (Appendix F) for the period and enter the total for each of these costs.

5. *Section D*

Use of this section recognizes reporting costs as part of total costs. It also provides for those other costs that are easily identifiable by each reporting activity. This section allows each DOD Component, as well as other levels of command, to amplify reporting requirements for subordinate levels. Use can vary, but items such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), and use of indicia apply.

6. *Section E*

The summary data provide a total best estimate cost figure for administering the FOI Program during the reporting period, a recap of fees collected, and the workload that generated these costs and collections.

Enclosure 1

DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/ Organization of the Joint Chiefs of Staff/ Unified Commands and Other Agencies Assigned to OSD for Administrative Support. Department of the Army; Department of the Navy; Department of the Air Force; Defense Communications Agency; Defense Contract Audit Agency; Defense Intelligence Agency; Defense Investigative Service; Defense Logistics Agency; Defense Mapping Agency; Defense Nuclear Agency; National Security Agency.

[FR Doc. 80-37868 Filed 12-4-80; 8:45 am]

BILLING CODE 3810-70-M

Department of the Army

32 CFR Part 553

Arlington National Cemetery; Visitors Rules for the Arlington National Cemetery

AGENCY: Department of the Army.

ACTION: Final rule.

SUMMARY: This rule revises the visitor's rules in effect for the Arlington National Cemetery that are set out at 32 CFR 553.22. The visitors' rules define the standards of conduct required of all visitors to the Arlington National Cemetery. This revision makes available, within the rules, standards and procedures for conduct of memorial services and ceremonies within the Cemetery by members of the public. The revision also attempts to insure that the rules prohibit conduct inconsistent with Arlington National Cemetery's unique role as the Nation's foremost shrine to the honored dead of its Armed Forces.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: Major James P. King, Office of the Assistant Secretary of the Army (Civil Works), Washington, D.C. 20310 (202–695–0482).

SUPPLEMENTARY INFORMATION: On October 7, 1980, the Army published in the **Federal Register** (45 FR 66476) as a proposed rule this revision to the visitors' rules in effect for Arlington National Cemetery. The basis and purpose for the revision are contained in the supplementary information then published with the proposed rule and will not be repeated here except as necessary to respond to public comments.

When the revision was published as a proposed rule, interested persons were invited to submit comments for consideration in connection with its adoption during a 30 day comment period ending November 6, 1980. No comments were received from interested persons during this period; however, one comment was received on November 7, 1980, from an individual from San Francisco, California and another comment was received on November 10, 1980, from the Gay Activists Alliance of Washington, D.C. Although these comments were received after the close of the comment period, they have been considered in order to give all interested

persons the maximum opportunity to participate in this rulemaking.

The individual commentor urges the Department of the Army not to adopt its proposed revision to the visitors' rules for Arlington National Cemetery because of a belief that the visitors' rules previously in effect adequately guarantee tranquility and decorum at the Cemetery and because the proposed revision appears overbroad and infringes on speech and conduct protected by the first amendment to the United States Constitution. The commentator objected to the following features of the proposed rule:

(1) The prohibition of *all* speeches which have not received the prior approval of the Superintendent or Commanding General (§ 553.22(f)(3));

(2) The prohibition of *all* demonstrations which have not received the prior approval of the Superintendent or Commanding General (§ 553.22(f)(2));

(3) The requirement of prior approval of all memorial services (§ 553.22(h)(3));

(4) The disallowal of all "partisan memorial services." * * * (§ 553.22(i)(2));

(5) The prohibition of all leafletting regardless of its impact and accompanying conduct (§ 553.22(f)(5)).

The Army has considered all the points made by the commentator and does not agree with the recommendation to maintain the current visitors' rules and not adopt its revision to the visitors' rules because: (1) the objections that are raised to the revision in the comment are equally applicable to the previous rules; (2) the restrictions in the previous rules and in the revision are necessary to preserve a number of important interests and do not violate the first amendment to the United States Constitution; and (3) the revision is needed to clarify the previous rules and to make more available to the public standards for conduct of memorial services and ceremonies in the Cemetery.

The first commentator, after making the general observation that the current visitors' rules in effect for Arlington National Cemetery are adequate, cites five "disturbing" new features of the revision; yet all five of these features are contained in the rules that were in effect prior to this revision. The comment first cites the prohibition of all speeches which have not received prior approval. First, the comment is incorrect when it states speeches require prior approval. Speeches are prohibited unless they are a part of a memorial service or ceremony authorized by the rules. It is the memorial service, not any speech at the memorial service, which requires prior approval under the rules. The revision does not require prior detailed screening of speeches given at memorial services although the rules do require services to be purely memorial in purpose and nonpartisan in nature. Second, the provision in the revision at subparagraph (f)(3) is the same as that previously contained at 32 CFR 553.22(e)(3) except "speeches" has been added after "orations." The addition of the word "speeches," as the Supplementary Information for the proposed rule in the **Federal Register** of October 7, 1980 (45 FR 66476) makes clear, was not a substantive change but was made merely to clarify existing prohibitions under the rules. Speeches have never been allowed at Arlington National Cemetery except as part of authorized memorial services or ceremonies.

The commentor next cites the prohibition of all demonstrations which have not received prior approval. The provision in the revision at subparagraph (f)(2) is the same as that previously contained at 32 CFR 553.22(e)(2) except the word "demonstrations" has been added between "picketing" and "or similar conduct." The addition of the word "demonstrations" was not a substantive change but was added only for purposes of clarity. Demonstrations have never been allowed in Arlington Cemetery except in the sense that the particular forms of memorial services and ceremonies enumerated in paragraph (c) of the revision are considered "demonstrations." Other forms of demonstrations have been considered similar to picketing and forbidden under 32 CFR 553.22(e)(2).

The revision's requirement for prior approval of memorial services and ceremonies at paragraphs (f) and h(3) is also not a change from the prior rules but merely carries forward the provisions of 32 CFR 553.22(e)(1). The only modifications made by the revision in the requirements for permission to conduct memorial services and ceremonies are that the revision: (1) makes clear that prior approval is not needed for private memorial services as defined in the revision; (2) makes clear that the Commanding General of the U.S. Army's Military District of Washington approves some memorial services or ceremonies (those that are official); and (3) sets out fully the procedures for persons to request permission to conduct memorial services or ceremonies in paragraph (i) rather than incorporating the procedures by reference to Army Technical Manual 10–287.

The provision in paragraph (i) of the revision prohibiting partisan activities during memorial services at the Cemetery is substantially similar to the provision contained in Army Technical Manual 10–287 that 32 CFR 553.22(e)(1) previously incorporated by reference. The only significant changes to the previously existing provisions that were in the Technical Manual involve: (1) an addition to the definition of partisan activities that includes activities having a primary purpose to gain publicity or engender support for any group or cause; and (2) inclusion of a more complete explanation as to the memorial purposes to which services or ceremonies may be dedicated.

The prohibition on leafletting contained in subparagraph f(5) of the revision, while new, reflects consistent practice at Arlington National Cemetery. Previously, prohibitions under 32 CFR 553.22 (e)(2) and (f) were interpreted to prohibit leafletting. No leafletting has ever been permitted on Arlington National Cemetery grounds.

The Army believes that all prohibitions contained in its revision to the visitors' rules for Arlington National Cemetery are constitutional. That Arlington National Cemetery is not a public forum, that there is a compelling interest in maintaining the dignity and decorum essential to the Cemetery's unique role as this Nation's foremost shrine to the honored dead of its Armed Forces, that there is a compelling interest in maintaining the political neutrality of the Army as a military institution, and that there is an obligation to those buried or memorialized in the Cemetery and to their families and friends to maintain an atmosphere at the Cemetery that is dignified and inoffensive for all, require a special analysis under first amendment jurisprudence. The Supreme Court has recognized that the government has no obligation to permit speech or expressional activities in areas that are not public forums when such speech or activities interfere instrumentally or symbolically with the function of the government's activities in that area. *See, e.g., Greer V. Spock,* 424 U.S. 828 (1976) (military bases need not be made available for partisan political rallies); *Pell v. Procunier,* 417 U.S. 817 (1974) (jail cells may be made off limits for press interviews); *Adderley v. Florida,* 385 U.S. 39 (1966) (assembly outside jail may be prohibited). *See also* L. Tribe, *American Constitutional Law* § 12–21 at 690–91 (1978). Further, the Supreme Court has recognized the authority to exclude speakers who intend to make partisan political

speeches from military installations when there is no discrimination based on the speaker's political viewpoint in excluding him. *Greer v. Spock, supra.* This is true even when the installation has been made available previously to civilians for some expressional activity. *See id.* at 838n.10; L. Tribe, *supra,* at 691 n. 21.

The Army believes that it is beyond question that Arlington National Cemetery is not a public forum and that it would be most inappropriate to turn it into one. Cemeteries traditionally have not been places that are open to the public for speechmaking, demonstrations, picketing or similar expressional activity. Further, Arlington National Cemetery is a military cemetery run by the Department of the Army where significant military activities take place. The Army has never allowed activities at Arlington National Cemetery such as demonstrations, picketing, leafletting, or speechmaking except for speeches, orations, or prayers at certain memorial services or ceremonies. Memorial services and ceremonies at the Cemetery have been strictly limited to those that are purely memorial in purpose and nonpartisan in nature. There are an abundance of alternative areas near the Cemetery such as parks, streets, and other public land (including areas near the Pentagon) where expressional activity such as speechmaking, picketing, demonstrations, and leafletting is more appropriate and is allowed.

That Arlington National Cemetery is not a public forum, that demonstrations, leafletting, and most speeches are inappropriate in any cemetery, let alone a military cemetery that is the foremost shrine to the honored dead of our Nation's Armed Forces, and that the applicable Supreme Court precedents discussed earlier permit the government to prohibit expressional activities when inappropriate in areas that are not public forums, dispose of the contentions by the commentor that the rules' prohibitions on speeches, demonstrations, and leafletting are unconstitutionally overbroad.

The Army believes that the Supreme Court case of *Greer v. Spock,* 424 U.S. 828 (1976) also disposes of the contention of the commentor concerning the unconstitutionality of the requirement that memorial services or ceremonies be nonpartisan in nature. (The commentor opined that the latter requirement was an impermissible content-based restriction on expression.) The Supreme Court in *Greer* explicitly recognized the legitimacy of a military policy of keeping official military activities wholly free of partisan political activities. *See Greer v. Spock, supra,* at 838–39. This was true even though the military authorities in *Greer* had allowed other civilian speakers to talk on nonpartisan subjects. *Id.* at 838n.10. One leading constitutional scholar, Professor Lawrence Tribe, notes that the implication of *Greer* is that the generally recognized rule in first amendment jurisprudence that government prohibitions be neutral regarding the content of expressional activity "may be achieved by discriminating among speakers in terms of subject matter, so long as there is no discrimination within any given subject in terms of viewpoint." L. Tribe, *American Constitutional Law* § 12–21 at 691n.21 (1978). The Army believes that the requirement in the visitors' rules that memorial services and ceremonies be purely memorial and nonpartisan in nature is exactly the same kind of objective and evenhanded policy approved by the Supreme Court in *Greer.* And in the case of Arlington National Cemetery not only are the considerations in *Greer* regarding military activities involved but also special considerations relating to Arlington's role as a cemetery.

The Army believes that *Greer* and other cases dealing with demonstrations and leafletting on military reservations dispose of the question of the propriety of prior approval of memorial services and ceremonies.

It should also be noted that restrictions similar to those contained in the prior visitors' rules for Arlington National Cemetery and in this revision were upheld in the only two cases known to the Army that deal with constitutional challenges to restrictions on expressional activity in cemeteries. In *Bennett v. McNamara,* C. A. 305–68 (D.D.C. 1968) *aff'd per curiam,* (D.C. 1969), the court upheld the Army's refusal to grant permission for a memorial service concerning the Vietnam War to be held at Arlington National Cemetery due to the partisan nature of the rally. In *Koehl v. Resor,* 296 F. Supp. 558 (E.D. Va. 1969), *aff'd,* 417 F. 2d 1338 (4th Cir.), *cert. denied,* 397 U.S. 1023 (1970), the Army's decision to refuse permission for a Nazi style ceremony during interment of George Lincoln Rockwell at Culpeper National Cemetery was upheld.

The comments provided by the Gay Activist Alliance (GAA) of Washington, D.C., involved three sections of the revision to the visitors' rules concerning: (1) the requirement that those requesting permission to engage in memorial services or ceremonies give the names of all participants and the number of persons expected to attend the service or ceremony, (2) the extension of the prohibition against services or ceremonies that are partisan in nature to include those having "a purpose to gain publicity or engender support for any group or cause;" and (3) the provision that if a service or ceremony is closely related to partisan activities being conducted outside the cemetery, it is partisan and therefore inappropriate.

The GAA's comment expressed concern that the requirements in paragraph (h) of the revision to the visitors' rules that requests to conduct memorial services and ceremonies shall describe "the names of all individuals participating in the service (and) the number of persons expected to attend the service" would be onerous and impracticable. GAA made the following recommendation:

> The requirement for names of persons participating serves no useful purpose and should be deleted.
>
> The requirement for inclusion of number of persons expected to attend, if retained at all, should be reworded to make clear that nothing more than a reasonable estimate or loose approximation is expected, *when possible,* and that departures from estimates supplied will not be disqualifying.

The Army agrees that there may be some occasions when providing this information far in advance of a ceremony is onerous or impracticable. The Army also agrees that a good faith estimate of the number of persons attending services or ceremonies satisfies the Army's administrative requirements in most cases and that departures from estimates that do not involve gross or repeated negligence should not disqualify individuals or groups from participating in future services or ceremonies at the Cemetery. However, it is desirable for the Army to obtain the names of key participants in services or ceremonies when practicable for administrative and historical purposes. Accordingly, the following changes have been made to the proposed rule published in the **Federal Register** of October 7, 1980:

(1) In the phrase "the names of all individuals participating in the service" in paragraph (h) of the revision the word "key" has been added.

(2) The word "estimated" has been added before the phrase "number expected to attend the service."

The Army believes these changes accommodate the concerns expressed while still permitting the Army to obtain information it requires for valid administrative and historical purposes.

The GAA also expressed concern that the provision in subparagraph (i)(2) relating to prohibition of partisan services that provide that a service is partisan "if it has as a purpose to gain publicity or engender support for any group or cause" may violate the first amendment or at least cause confusion as to whether publicizing a planned service is permissible under the rules. The GAA is particularly concerned that a group, by publicizing that it will participate in or hold a memorial service or ceremony, will be making the service partisan.

The Army's intent in including this provision regarding publicity in its revision of the visitors' rules is to prevent the pretextual use of memorial services at Arlington National Cemetery as forums for espousing partisan causes. Due to its unique geographical location overlooking the National Capital and its prominence in the eyes of the Nation, Arlington National Cemetery sometimes has been sought by groups as a forum to gain publicity in order to give wide dissemination to partisan messages rather than to pay tribute to those the Cemetery is intended to honor. The Army regards this practice as clearly inappropriate for the Cemetery and entirely contrary to its policy of permitting services that are purely memorial in purpose and nonpartisan. Publicizing of participation in or holding of a ceremony at Arlington National Cemetery, when done in a manner that is appropriate to the circumstances, would not make a service or ceremony partisan under this rule although efforts at publicizing that are extraordinary under the circumstances may be an indicator that a primary purpose of the service is to gain publicity for a group or cause and that the service is therefore partisan. However, whether the purpose of a service or ceremony is partisan or not can only be determined from all the surrounding circumstances.

To alleviate any concern that merely ancillary publicizing of participation in a memorial service or ceremony will be interpreted as making a ceremony partisan, the language of the proposed rule published in the **Federal Register** of October 7, 1980, has been changed so that the word "primary" now precedes the word "purpose." The Army believes that it is necessary to prohibit services that have a primary purpose to gain publicity or engender support for any group or cause because such a purpose makes the service clearly partisan and not memorial. The Army believes this restriction does not violate the first amendment to the United States Constitution due to the validation in *Greer* v. *Spock*, 424 U.S. 828 (1976) of evenhanded policy by the military of avoiding partisan politics and due to the compelling interests there are in maintaining the dignity and decorum essential to Arlington National Cemetery and in fulfilling an obligation to those interred or memorialized in the Cemetery and to their family and friends to maintain an atmosphere at the Cemetery that is dignified and inoffensive to all.

The final point made by the GAA is that the provision in subparagraph (i)(2) of the revision that provides that "if a service is closely related to partisan activities being conducted outside the Cemetery, it is partisan and therefore inappropriate" violates the first amendment to the United States Constitution and should be deleted.

The Army believes that this concern is based, at least in part, if not in whole, on a misinterpretation of the phrase "closely related" in the provision. The phrase "closely related" requires proximity both in time and location. This provision has been invoked by the Army on a number of occasions when groups have engaged in demonstrations in the Washington, D.C. area and wanted to conduct services in Arlington National Cemetery either during the period of demonstrating or in conjunction with these demonstrations. For example, the provision has been invoked to deny permission to groups to conduct services at the same time the groups making the requests were conducting pro-Vietnam war and anti-Vietnam war rallies in Washington. As another example, the provision was recently invoked to deny a request by the American Farmer's Movement to conduct services during a period when the Farmers' Movement was demonstrating in nearby Washington. The provision follows the approach taken by Judge McGuire in *Bennett* v. *McNamara*, C.A. 305-68 (D.D.C. 1968), *aff'd per curiam*, (D.D.C. 1969), (Burger, Tamm, and Robinson, Circuit Judges) which upheld an Army refusal to permit a service in the Cemetery that was closely related to partisan activities outside the Cemetery concerning the Vietnam War.

The Army believes it is desirable to maintain this provision because of longstanding experience that shows that one of the clearest indicators of whether a memorial service or ceremony is partisan has been a close relationship in time and location to partisan activities being conducted by the same individuals or group outside the Cemetery. However paragraph (i)(2) has been reworded to clarify the provision.

The Army has determined that no other changes, other than those previously discussed, need be made to the proposed rule.

Accordingly, 32 CFR Part 553 is amended by revising Section 553.22 to read as follows:

§ 553.22 Visitors' rules for the Arlington National Cemetery.

(a) *Purpose.* The rules of this section define the standards of conduct required of all visitors to the Arlington National Cemetery, Arlington, Virginia. Applicable Army regulations and directives should be consulted for all other matters not within the scope of these rules.

(b) *Scope.* Pursuant to Title 40 United States Code, Sections 318a and 486, and based upon delegations of authority from the Administrator, General Services Administration, the Secretary of Defense, and the Secretary of the Army, this section applies to all Federal property within the charge and control of the Superintendent, Arlington National Cemetery, and to all persons entering in or on such property. Any person who violates any of the provisions of paragraphs (d), (e), (f), (g), (h), or (i) of this section shall be subject to the penalties set out in Title 40 United States Code Section 318c.

(c) *Definitions.* When used in this section;

(1) The term "memorial service or ceremony" means any formal group activity conducted within the Arlington National Cemetery grounds intended to honor the memory of a person or persons interred in the Cemetery or those dying in the military service of the United States or its allies. "Memorial service or ceremony" includes a "private memorial service," "public memorial service," "public wreath laying ceremony" and "official ceremony" as defined in this section.

(2) The term "official ceremony" means a memorial service or ceremony approved by the Commanding General, Military District of Washington, in which the primary participants are authorized representatives of the United States Government, a state government, a foreign country, or an international organization who are participating in an official capacity.

(3) The term "private memorial service" means a memorial service or ceremony, other than an official ceremony, conducted at a private gravesite within Arlington National Cemetery by a group of relatives and/or friends of the person interred or to be interred at that gravesite. Private memorial services may be closed to members of the public.

(4) The term "public memorial service" means a ceremony, other than an official ceremony, conducted by members of the public at the Arlington Memorial Amphitheater, the Confederate Memorial, the Mast of the Maine, the John F. Kennedy Grave or at an historic shrine or at a gravesite within Arlington National Cemetery designated by the Superintendent, Arlington National Cemetery. All public memorial services are open to any member of the public to observe.

(5) The term "public wreath laying ceremony" means a brief ceremony, other than an official ceremony, in which members of the public, assisted by members of the Tomb Guard, present a wreath or similar memento, approved by the Superintendent or Commanding General, at the tomb and plaza area of the Tomb of the Unknown Soldier (also known as the Tomb of the Unknowns). Participants follow the instructions of the Tomb Guards, Superintendent and Commanding General in carrying out the presentation. The ceremony is open to any member of the public to observe.

(6) The term "Superintendent" means the Superintendent, Arlington National Cemetery or his representative.

(7) The term "Commanding General," means the Commanding General, U.S. Army Military District of Washington or his representative.

(d) *Visitors hours.* Visitors' hours shall be established by the Superintendent and posted in conspicuous places. Unless otherwise posted or announced by the Superintendent, visitors will be admitted during the following hours:

October through March—8 a.m. through 5 p.m.

April through September—8 a.m. through 7 p.m.

No visitor shall enter or remain in the Cemetery beyond the time established by the applicable visitors' hours.

(e) *Destruction or Removal of Property.* No person shall willfully destroy, damage, mutilate or remove any monument, gravestone, structure, tree, shrub, plant or other property located within the Cemetery grounds.

(f) *Conduct within the Cemetery.* Because Arlington National Cemetery is a shrine to the honored dead of the Armed Forces of the United States and because certain acts, appropriate elsewhere, are not appropriate in the Cemetery, all visitors, including persons attending or taking part in memorial services and ceremonies, shall observe proper standards of decorum and decency while within the Cemetery grounds. Specifically, no person shall:

(1) Conduct any memorial service or ceremony within the Cemetery, except private memorial services, without the prior approval of the Superintendent or Commanding General. All memorial services and ceremonies shall be conducted in accordance with the rules established in paragraph (h) and, except for official ceremonies, paragraph (i) of this section. Official ceremonies shall be conducted in accordance with guidance and procedures established by the Commanding General;

(2) Engage in any picketing, demonstration or similar conduct within the Cemetery grounds;

(3) Engage in any orations, speeches, or similar conduct to assembled groups of people, unless the oration is part of a memorial service or ceremony authorized by this section;

(4) Display any placards, banners, flags or similar devices within the Cemetery grounds, unless, in the case of a flag, use of the same is approved by the Superintendent or Commanding General and is part of a memorial service or ceremony authorized by this section;

(5) Distribute any handbill, pamphlet, leaflet, or other written or printed matter within the Cemetery grounds except that a program may be distributed if approved by the Superintendent or Commanding General and such distribution is a part of a memorial service or ceremony authorized by this section;

(6) Allow any dog, cat, or other pet to run loose within the Cemetery grounds;

(7) Use the Cemetery grounds for recreational activities such as sports, athletics, or picnics;

(8) Ride a bicycle within Cemetery grounds except on Meigs Drive, Sherman Drive and Schley Drive or as otherwise authorized by the Superintendent under this subparagraph. All other bicycle traffic will be directed to the Visitors' Center where bicycle racks are provided. Exceptions for bicycle touring groups may be authorized in advance and in writing by the Superintendent. An individual visiting a relative's gravesite may be issued a temporary pass by the Superintendent to permit him to proceed directly to and from the gravesite by bicycle;

(9) Deposit or throw litter on Cemetery grounds;

(10) Play any radio, tape recorder, or musical instrument, or use any loudspeaker within the Cemetery grounds unless use of the same is approved by the Superintendent or Commanding General and is part of a memorial service or ceremony authorized by this section;

(11) Drive any motor vehicle within Arlington National Cemetery in excess of twenty miles per hour or such lesser speed limit as the Superintendent posts;

(12) Park any motor vehicle in any area on the Cemetery grounds designated by the Superintendent as a no parking area; or leave any vehicle in the Visitors' Center Parking Lot at the Cemetery beyond two hours;

(13) Engage in any disorderly conduct within the Cemetery grounds. For purposes of this section, a person shall be guilty of disorderly conduct if, with purpose to cause, or with knowledge that he is likely to cause, public inconvenience, annoyance or alarm, he:

(i) Engages in, promotes, instigates, encourages, or aids and abets fighting, or threatening, violent or tumultuous behavior;

(ii) Yells, utters loud and boisterous language or makes other unreasonably loud noise;

(iii) Interrupts or disturbs a memorial service or ceremony;

(iv) Utters to any person present abusive, insulting, profane, indecent or otherwise provocative language or gesture that by its very utterance tends to incite an immediate breach of the peace;

(v) Obstructs movement on the streets, sidewalks, or pathways of the Cemetery grounds without prior authorization by competent authority;

(vi) Disobeys a proper request or order by the Superintendent, Cemetery special police, park police, or other competent authority to disperse or to leave the Cemetery grounds; or

(vii) Otherwise creates a hazardous or physically offensive condition by any act not authorized by competent authority.

(g) *Soliciting and Vending.* No person shall display or distribute commercial advertising or solicit business while within the Cemetery grounds.

(h) *Requests to Conduct Memorial Services and Ceremonies.*

(1) Requests by members of the public to conduct memorial services or ceremonies shall be submitted to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211. Such requests shall describe the proposed memorial service or ceremony in detail to include the type of service, its proposed location, the name of the individual or organization sponsoring the service, the names of all key individuals participating in the service, the estimated number of persons expected to attend the service, the expected length of the service, the service's format and content, whether permission to use loud-speaker systems or musical instruments or flags during

the service is requested and, if so, the number, type, and how they are planned to be used, whether permission to distribute printed programs during the service is requested, and, if so, a description of the programs, and whether military support is requested. Individuals and organizations sponsoring memorial services or ceremonies shall provide written assurance that the services or ceremonies are not partisan in nature, as defined in paragraph (i) of this section, and that they and their members will obey all rules set out in this section and act in a dignified and proper manner at all times while in the Cemetery grounds.

(2) Requests to conduct official ceremonies shall be submitted to the Commanding General.

(3) Memorial services or ceremonies other than private memorial services may be conducted only after permission has been received from the Superintendent or Commanding General. Private memorial services may be conducted only at the gravesite of a relative or friend. All other memorial services and ceremonies may be conducted only at the area or areas designated by the Superintendent or Commanding General as follows:

(i) Public memorial services may be authorized to be conducted only at the Arlington Memorial Amphitheater, the Confederate Memorial, the John F. Kennedy Grave, or other sites designated by the Superintendent.

(ii) Public wreath laying ceremonies may be authorized to be conducted at the tomb and plaza area of the Tomb of the Unknown Soldier (also known as the Tomb of the Unknowns).

(iii) Official ceremonies may be authorized to be conducted at sites designated by the Superintendent or Commanding General.

(i) *Conduct of Memorial Services and Ceremonies.* All memorial services and ceremonies within Arlington National Cemetery, other than official ceremonies, shall be conducted in accordance with the following rules:

(1) Memorial services and ceremonies shall be purely memorial in purpose and dedicated only to the memory of all those interred in the Cemetery, to all those dying in the military service of the United States, to all those dying in the military service of the United States while serving during a particular conflict or while serving in a particular military unit or units, or to the memory of the individual or individuals interred or to be interred at the particular gravesite at which the service or ceremony is held.

(2) Partisan activities are inappropriate in Arlington National Cemetery, due to its role as a shrine to all the honored dead of the Armed Forces of the United States and out of respect for the men and women buried there and for their families. Services or any activities inside the Cemetery connected therewith shall not be partisan in nature. A service is partisan and therefore inappropriate if it includes commentary in support of, or in opposition to, or attempts to influence, any current policy of the Armed Forces, the Government of the United States or any state of the United States; if it espouses the cause of a political party; or if it has as a primary purpose to gain publicity or engender support for any group or cause. If a service is closely related, both in time and location, to partisan activities or demonstrations being conducted outside the Cemetery, it will be determined to be partisan and therefore inappropriate. If a service is determined to be partisan by the Superintendent or the Commanding General, permission to conduct memorial services or ceremonies at the Cemetery will be denied.

(3) Participants in public wreath laying ceremonies shall remain silent during the ceremony.

(4) Participants in public memorial services at the John F. Kennedy Grave shall remain silent during the service.

(5) Public memorial services and public wreath laying ceremonies shall be open to all members of the public to observe.

(6) Participants in public wreath laying ceremonies shall follow all instructions of the Tomb Guards, Superintendent, and Commanding General relating to their conduct of the ceremony. (40 U.S.C. 318a, 486, and delegations of authority from the Administrator, General Services Administration, Secretary of Defense, and Secretary of the Army)

Dated: November 25, 1980.

Michael Blumenfeld,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 80-37743 Filed 12-4-80; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

National Forest Timber Sales; Export and Substitution Restrictions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: Regulations regarding the export of timber from National Forest System Lands and the use of such timber in substitution for private timber which is exported by the purchaser are revised and clarified. New reporting requirements for purchasers who sell unprocessed timber are provided. Business entities are considered affiliates for the entire calendar year if they have an affiliation during any part of the calendar year. The definition of unprocessed western red cedar is revised to implement the "Bonker Amendment" to the Export Administration Act of 1979. Substitution is defined as an increase in export of timber from private land by more than 10 percent above historic levels in any year that a firm has National Forest timber under contract. The prior regulation defined substitution as an increase in the level of exports from private land by more than 10 percent above historic levels in any year that the purchase of National Forest timber continues.

EFFECTIVE DATE: February 3, 1981.

FOR FURTHER INFORMATION CONTACT: George M. Leonard, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, 202-447-4051.

SUPPLEMENTARY INFORMATION: On May 9, 1980, the Secretary of Agriculture published a proposed rule (45 FR 30652) setting forth proposed revisions of regulations providing for restrictions on the export of National Forest timber and on the use of such timber in substitution for private timber which is exported by the purchaser. These regulations implement restrictions imposed each year since 1974 by the annual Appropriations Acts for the Department of the Interior and Related Agencies. Subsequent to the publication of the proposed rule, the House Committee on Appropriations provided the following direction in their report on the fiscal year 1981 appropriations bill.

Log Exports/Third Party Substitution

In spite of the Forest Service investigation of and hearings about third party substitution, and the Forest Service's conclusion that the practice was not extensive and that further efforts at control threatened to disrupt log markets and decrease the efficient log utilization, the Committee continues to receive complaints about the growth of the practice of mills which could not bid on Forest Service sales because they were exporting private logs, buying Forest Service logs from the original purchaser of the sale.

The Committee is anxious to insure that the supply of public timber required to provide opportunities for local mills to operate is not endangered, while at the same time insuring

that there is no unreasonable interference with the disposition by private owners of private timber in the manner they consider most advantageous or log sorting and exchange or sale between mills in a given locality to achieve the highest and best use of the log.

The Committee notes and approves the proposed rule, 36 CFR 223.5 and 223.10 which requires more extensive reports on log use to be filed every six months, prohibits the export of unprocessed timber from National Forests west of the 100th Meridian in the contiguous 48 States, and the substitution by the purchaser of sale or resale to anyone who does not agree to the processing requirements of the rules.

The Committee directs the Forest Service: (a) if feasible to continue to monitor this program; and (b) if feasible, to investigate and report on (1) the legal relationship of entities engaging in third party substitution to determine if purchasers of federal timber are legal or de facto agents of entities not eligible to purchase, and (2) volumes of logs purchased from or sold to third parties and substituted for exported private logs over the last year by individual buyers and sellers.

The Committee directs that a preliminary report be submitted by January 1, 1981 and that a full report, together with recommendations for change, if any, be submitted prior to the Forest Service hearings next spring.

Revisions were made in the proposed reporting requirements to reflect this additional congressional direction. Other minor changes reflected in the final rule are discussed in the following summary of comments.

Summary of Comments:

Comments received on the proposal were generally favorable although there was some concern about the failure to address the issue of third party substitution. As noted in the proposal, it has been determined that the phrase "substitution for private timber exported by the purchaser" in the annual Appropriations Acts for Interior and Related Agencies applies to the purchaser of National Forest timber and does not authorize limitations on subsequent buyers.

One commenter suggested that the reporting system should provide for a distinction between the volume of fiber material and the volume of standard grade material. Since the export and substitution provisions of § 223.10 apply only to unprocessed timber which by definition is material meeting the peeler and sawmill log grade requirements of the Official Log Scaling and Grading Rules, this addition to the Regulation was not necessary.

There was an objection to treating cedar lumber having any wane as "unprocessed." It was argued that the Commerce Department regulations under section 7(i) of the Export Administration Act are only in "interim" status and are now under review. While it is true that the Commerce Department regulations are not final, the statutory language is unequivocal in providing that the term "unprocessed western red cedar" means red cedar timber which has not been processed into lumber without wane. Since this provision applies to all Federal timber, we believe it would be improper to adopt a different processing standard in this Regulation. However, since the definition applies only to Federal and State timber, a proviso has been incorporated in the definition of unprocessed western red cedar regarding the definition of processed timber from private lands.

It was urged that § 223.3 include a provision that would require reporting items listed under paragraph (p) as a condition of timber sale award or extension of any existing contract. Additions to § 223.5 made in response to the direction in the Appropriations Committee Report effectively respond to this direction. The requirement that reporting requirements be updated at the time of sale extension will be incorporated in the Forest Service Manual.

It was suggested that the purchaser be required to report the farthest distance National Forest timber has been hauled since 1971 to determine the sale of timber from private lands. This suggestion was not adopted since it is not necessary to the interpretation or enforcement of the Regulation. It is noted, however, that since reports on log distribution by individual sale are required, it would be possible for anyone interested to make this determination.

It was suggested that § 223.10(b) be deleted since the underlying statutory authority has been repealed. This suggestion was adopted.

A commenter suggested adding language stating that violations of export and substitution requirements of a sale may also result in suspension or termination of other National Forest timber sale contracts. There is no statutory authority for imposing such penalties.

Another commenter suggested that the definition of unprocessed timber be amended to exclude standing timber or trees. It was argued that the regulation imposes an unreasonable burden on the seller of private timber to ensure that his logs do not end up in export. Adoption of this suggestion would render the substitution restrictions meaningless since substantial volumes of stumpage are routinely sold from private lands in the Northwest. Sellers of private timber, whether standing or in the form of logs, must take the steps necessary to ensure that the timber they sell does not enter the export market in volumes in excess of their historic levels, if they wish to buy Natonal Forest timber.

It was suggested that the definition of substitution in § 223.10(a)(4)(ii) be clarified to provide that substitution occurs when a firm increases exports of unprocessed timber in a tributary area while it has National Forest timber under contract in the same tributary area. This clarification was made.

It was also suggested that the definition of tributary area be expanded to include private land from which timber can logically and economically be expected to be delivered to a specific processing facility or complex. The definition in the proposal, which is unchanged from that currently in effect, uses actual delivery of logs from National Forest timber sales to define the geographic area. This has proven a workable definition. It requires no assumptions on what may be logical or economical and public records are readily available to verify the data used. The suggestion was not adopted.

One commenter noted that § 223.10(f) would permit contract cancellation for violations or false certification by a subsequent buyer or recipient of National Forest timber. It was argued that imposing penalties on the purchaser for violations of which he had no participation or knowledge is invalid. The regulation was revised to clarify this issue.

It was argued that the proposed regulations may not be applied retroactively so as to impose more stringent export and substitution restrictions on contracts for the purchase of National Forest timber entered into prior to adoption. It is agreed that these Regulations apply only to contracts entered into after the effective day of the Regulations, except where the new requirements may be imposed as a condition of contract extension.

In addition to responding to the comments as described above, there were several changes of minor editorial nature.

This action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, "Improving Government Regulations," and has been classified as "significant." An Impact Analysis Statement has been prepared and is available from the Forest Service, Timber Management Staff, Room 3207, South Agriculture Building, Washington, DC.

In light of the foregoing, 36 CFR Part 223 is amended as shown below:

1. The following paragraph (p) is added to 36 CFR 223.3:

§ 223.3 Contract conditions.

* * * * *

(p) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th Meridian in the contiguous 48 States and Alaska, advertised after the effective date of this Regulation, shall include provisions implementing 36 CFR 223.10 et seq. Such contracts shall also require purchasers to (1) submit, until all unprocessed timber is accounted for, a certified report, at 6-month intervals, on the disposition of any unprocessed timber harvested from the sale, including a description of unprocessed timber which is sold, exchanged, or otherwise disposed of to another person and a description of the relationship with the other person; (2) submit, until all unprocessed timber from the sale is accounted for, a certified report, at 6-month intervals, on the sale of any unprocessed timber from private lands in the tributary area which is exported or sold for export; and (3) maintain records of all such transactions involving unprocessed timber, and to make such records available for inspection and verification by the Forest Service for up to 3 years after the sale is terminated.

(Sec. 14, Pub. L. 94–588, 90 Stat. 2958, as amended 16 U.S.C. 472a)

2. The following paragraph (i) is added to 36 CFR 223.5:

§ 223.5 Advertisement and bids.

* * * * *

(i) In order to have a bid considered for a sale of timber from National Forest System lands west of the 100th Meridian in the contiguous 48 States, a person must:

(1) Certify that purchase of the timber does not constitute substitution as defined in 36 CFR 223.10.

(2) Agree to furnish to the Forest Service, prior to sale award, the names and addresses of processing plants or other locations to which the timber is expected to be delivered; the names and advertised volumes of timber sales purchased for delivery to each such location in calendar years 1971, 1972, and 1973; and the volumes of unprocessed timber from private lands, tributary to each location listed, which was exported or sold for export in calendar years 1971, 1972, and 1973.

(3) Agree to furnish the information required by item (2) above prior to hauling to any location not previously identified.

(4) Provide a certified report showing (a) the disposition of unprocessed National Forest timber harvested in the pevious calendar year in the tributary area in which the timber from the sale will be processed, including a description of unprocessed timber which is sold, exchanged, or otherwise disposed of to another person and a description of the relationship with the other person, and (b) the volumes of unprocessed timber from private lands in the tributary area which was exported or sold for export in the previous calendar year.

(Sec. 14, Pub. L. 94–588, 90 Stat. 2958, as amended, 16 U.S.C. 472a)

3. Section 223.10 is revised as follows:

§ 223.10 Timber export and substitution restrictions.

(a) The following definitions apply to the provisions of this section:

(1) Export means either direct or indirect export to a foreign country and occurs on the date that a person enters into a contract or other binding transaction for the export of unprocessed timber or, if that date cannot be established, when unprocessed timber is found in an export yard or pond, bundled or otherwise prepared for shipment, or aboard an ocean-going vessel. An export yard or pond is an area where sorting and/or bundling of logs for shipment outside the United States is accomplished. Unprocessed timber, whether from National Forest System or private lands, is exported directly when exported by the National Forest timber purchaser. Timber is exported indirectly when export occurs as a result of a sale to another person or as a consequence of any subsequent transaction.

(2) Historic level means the average annual volume of unprocessed timber purchased or exported in calendar years 1971, 1972, and 1973.

(3) Private lands mean lands held or owned by a private person. Nonprivate lands include, but are not limited to, lands held or owned by the United States, a State or political subdivision thereof, or any other public agency, or lands held in trust by the United States for Indians.

(4) Substitution means the purchase of unprocessed timber from National Forest System lands to be used as replacement for unprocessed timber from private lands which is exported. Substitution occurs when (i) a person increases purchases of National Forest timber in any calendar year more than 10 percent above their historic level and in the same calendar year exports unprocessed timber from private land in the tributary area; or (ii) a person increases exports of more than 10 percent above their historic level in any calendar year while they have National Forest timber under contract.

(5) Tributary area means the geographic area from which unprocessed timber from National Forest System land is delivered to a specific processing facility or complex. A tributary area is expanded when National Forest timber outside an established area is hauled to the processing facility.

(6) Unprocessed timber, except western red cedar in the contiguous 48 States, means trees or portions of trees having a net scale content not less than 33⅓ percent of the gross volume, or the minimum piece specification set forth in the timber sale contract, in material meeting the peeler and sawmill log grade requirements published in the January 1, 1980—Official Log Scaling and Grading Rules used by Log Scaling and Grading Bureaus on the West Coast; cants to be subsequently remanufactured exceeding 8¾ inches in thickness; cants of any thickness reassembled into logs; and split or round bolts, except for aspen, or other roundwood not processed to standards and specifications suitable for end-product use. Unprocessed timber shall not mean pulp (utility) grade logs and Douglas-fir special cull logs or timber processed into the following:

(i) Lumber and construction timbers, regardless of size, sawn on four sides;

(ii) Chips, pulp, and pulp products;

(iii) Green veneer and plywood;

(iv) Poles, posts, or piling cut or treated for use as such;

(v) Cants cut for remanufacture, 8¾ inches in thickness or less;

(vi) Aspen bolts, not exceeding 4 feet in length.

(7) Unprocessed western red cedar timber in the contiguous 48 States means trees or portions of trees of that species which have not been processed into (1) lumber without wane; (ii) chips, pulp, and pulp products; (iii) veneer and plywood; (iv) poles, posts, or piling cut or treated with preservatives for use as such and not intended to be further processed; or (v) shakes and shingles; provided that lumber from private lands manufactured to the standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau and manufactured lumber authorized to be exported under license by the Department of Commerce shall be considered processed.

(8) Person means an individual, partnership, corporation, association, or other legal entity and includes any

subsidiary, subcontractor, parent company, or other affiliate. Business entities are considered affiliates for the entire calendar year when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person during any part of the calendar year.

(9) Purchase occurs when a person is awarded a contract to cut National Forest timber or through the approval of a third party agreement by the Forest Service.

(10) Purchaser means a person that has purchased a National Forest timber sale.

(b) Unprocessed timber from National Forest System lands west of the 100th Meridian in the contiguous 48 States may not (1) be exported from the United States; (2) be used in substitution for unprocessed timber from private lands which is exported; or (3) be sold, traded, exchanged, or otherwise given to any person who does not agree to manufacture it to meet the processing requirements of this section and/or require such a processing agreement in any subsequent resale or other transaction. This limitation on export or substitution does not apply to species of timber previously found to be surplus to domestic needs or to any additional species, grades, or quantities of timber which may be found by the Secretary to be surplus to domestic needs.

(c) Unprocessed timber from National Forest System lands in Alaska may not be exported from the United States or shipped to other States without prior approval of the Regional Forester. This requirement is necessary to ensure the development and continued existence of adequate wood processing capacity in that State for the sustained utilization of timber from the National Forests which are geographically isolated from other processing facilities. In determining whether consent will be given for the export of timber, consideration will be given to, among other things, whether such export will (1) permit more complete utilization on areas being logged primarily for local manufacture, (2) prevent loss or serious deterioration of logs unsaleable locally because of an unforeseen loss of market, (3) permit the salvage of timber damaged by wind, insects, fire, or other catastrophe, (4) bring into use a minor species of little importance to local industrial development, or (5) provide material required to meet urgent and unusual needs of the Nation.

(d) Prior to a determination by the Secretary of Agriculture that a species, grade, or quantity of unprocessed timber is surplus to domestic needs, a public hearing shall be held to seek advice and counsel on the needs of domestic users and processors. Notice of any such determination shall be published in the **Federal Register.** Any determination of surplus timber may be withdrawn by the Secretary following a public notice which permits interested persons to comment. Public hearings will be conducted in accordance with the following procedures:

(1) Notice will be published in the **Federal Register** and in a newspaper of general circulation within the area affected by the proposed determination at least 15 days prior to the hearing and persons known to be interested will be notified directly.

(2) The time, place, and conduct of the hearing will be coordinated with the Department of the Interior and shall be at a convenient location within the area affected.

(3) The hearing record shall remain open for at least 10 calendar days following the hearing for receipt of additional written statements.

(e) For false certification of documents relating to export or substitution and/or other violations of export and substitution requirements by the purchaser of timber from National Forest System lands, the Forest Service may cancel the subject contract, debar the involved person or persons from bidding on National Forest timber, or initiate other action as may be provided by law or regulation.

(Sec. 14, Pub. L. 94–588, 90 Stat. 2958, as amended, 16 U.S.C. 472a; Sec. 301, Pub. L. 96–126, 93 Stat. 979; Sec. 1, 30 Stat. 35, as amended, 16 U.S.C. 55.1)

Bob Bergland,

Secretary.

December 1, 1980.

[FR Doc. 80–37762 Filed 12–4–80; 8:45 am]

BILLING CODE 3410–11–M

VETERANS ADMINISTRATION

38 CFR Part 17

Medical Benefits; Miscellaneous

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) has amended its "Medical Series" of regulations to correct an error concerning its authority to furnish medical care in foreign countries. Nursing home care may not be furnished in a foreign country other than the Republic of the Philippines. There has also been a change in the name of the Government hospital in Quezon City, Republic of the Philippines. It is now called Memorial Medical Center instead of Veterans Memorial Hospital.

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein (136F), 810 Vermont Avenue NW., Washington, D.C. 20420, (202) 389–2989.

SUPPLEMENTARY INFORMATION: On pages 14071 and 14072 of the **Federal Register** of March 4, 1980, proposed amendments were published for certain sections of Title 38, Code of Federal Regulations from § 17.36 through § 17.38. Interested persons were given 30 days to submit comments, suggestions or recommendations. No comments were received regarding the proposed regulations. The proposed regulations are hereby adopted without change and are set forth below.

Approved: November 24, 1980.

By direction of the Administrator:

Rufus H. Wilson,

Deputy Administrator.

1. Section 17.36 is revised to read as follows:

§ 17.36 Hospital care and medical services in foreign countries other than the Philippines.

No person shall be entitled to receive hospital or domiciliary care or medical services in a foreign country other than the Republic of the Philippines, except as provided in paragraphs (a) and (b) of this section:

(a) Hospital care or medical services for otherwise eligible veterans who are citizens of the United States sojourning or residing abroad and in need of treatment for an adjudicated service-connected disability, or non-service-connected disability associated with and held to be aggravating a service-connected disability.

(b) Hospital care or medical services for a veteran who has been found in need of vocational rehabilitation, and for whom an objective has been selected, or who is pursuing a course of vocational rehabilitation training, and who is medically determined to be in need of care or treatment for any of the following reasons:

(1) To make possible his or her entrance into a course of training; or

(2) To prevent interruption of a course of training; or

(3) To hasten the return to a course of training when a veteran in interrupted or leave status, when cessation of instruction has become necessary because of illness, injury, or dental condition. (38 U.S.C. 624)

§ 17.37 [Amended]

2. Section 17.37 is amended by deleting the words "Veterans Memorial

Hospital" and substituting the words "Veterans Memorial Medical Center" in the title, the introductory sentence, and paragraph (b).

§ 17.38 [Amended]

3. Section 17.38 is amended by deleting the words "Veterans Memorial Hospital" and substituting the words "Veterans Memorial Medical Center" in the title, the introductory portion preceding paragraph (a), the introductory portion of paragraph (a), the introductory portion of paragraph (b), paragraph (c) (1) and (2), and paragraph (d)(2).

[FR Doc. 80-37825 Filed 12-4-80; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 1670-2]

Approval of Revision of the Commonwealth of Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of a revision to the Commonwealth of Virginia's State Implementation Plan (SIP) which is intended to establish an Ambient Air Quality Monitoring Network under 40 CFR, Part 58 (State & Local Air Monitoring System or SLAMS).

The data will be used, for determining the status of attainment of National Ambient Air Quality Standards (NAAQS), as a basis for requiring control of source emissions of criteria pollutants, for determining and tracking air pollution episodes, for growth planning in urban areas, for determining the impact of area sources and for reporting to the public the status of Virginia's air quality.

EFFECTIVE DATE: January 5, 1981.

ADDRESSES: Copies of the revision and associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: Patricia Sheridan

Virginia State Air Pollution Control Board, Room 1106, Ninth Street Office Building, Richmond, Virginia, ATTN: W. R. Meyer, Executive Director

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W. (Waterside Mall), Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20005

FOR FURTHER INFORMATION CONTACT: Joe Paparella, Air Programs Branch (3AH10), U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, telephone (215) 597-8184.

SUPPLEMENTARY INFORMATION:

I. Background

On March 24, 1980, the Commonwealth of Virginia submitted to the Regional Administrator, EPA Region III, a revision of the Virginia State Implementation Plan (SIP). This section of the SIP consists of provisions which meet the new requirements for monitoring air quality which are in 40 CFR 58.20 (Air Quality Surveillance: Plan Content). The air quality surveillance network which will be established, as provided in this SIP revision, will consist of the present network with certain modifications and additions. The provisions of this submittal are intended as a supplement to existing provisions and are not intended to revoke or suspend any previous submittals.

The network will measure ambient levels of "criteria pollutants" or those pollutants for which National Ambient Air Quality Standards (NAAQS) have been established by EPA.

The network description will include the following for each station in the air quality surveillance network: a. The SAROAD site identification form.

b. The identity of the monitoring method or analyzer.

c. The identity of any necessary method of sample analysis.

d. The sampling schedule.

e. The monitoring objective.

f. The spatial scale of representativeness.

Also, on file for public inspection will be the schedule for the following:

a. Locating and/or placing into operation any station which is not operating or located correctly on January 1, 1980.

b. Implementing quality assurance procedures for any station for which those procedures are not implemented by January 1, 1980.

c. Re-locating each station not sited according to the siting parameters of Appendix E to 40 CFR Part 58 by January 1, 1980.

Each station in the air quality surveillance network provided for by this SIP revision and described in the network description will be termed a State and Local Air Monitoring Station or a SLAMS. All stations in the Commonwealth of Virginia's SLAMS network will be operated in accordance with the criteria established by Subpart B of 40 CFR Part 58.

Each SLAMS will be sited in accordance with the siting parameters contained in Appendix E to 40 CFR Part 58.

Each continuous analyzer in a SLAMS will be operated on a continuous basis and data gathered as hourly averages. Each manual method will be operated for a full 24-hour period at six-day intervals.

Reference or equivalent methods will be used in SLAMS as defined by EPA in 40 CFR Section 50.1, or will be particulate sampler for which a site-specific relationship to the Hi-vol has been established at the site of the SLAMS.

The quality assurance procedures of Appendix A to 40 CFR Part 58 will be followed when operating the SLAMS network and processing air quality data.

The concept of episode monitoring involves daily monitoring in order to detect when ambient pollution levels reach concentrations corresponding to an air quality episode, and monitoring during episodes to maintain surveillance of the situation. The Commonwealth of Virginia will operate SLAMS for monitoring and declaring episodes for the criteria pollutant in the localities of Northern Virginia, Richmond, Norfolk and Salem (Roanoke County). At least one episode station for each of the criteria pollutants will be operated in those localities.

Each SLAMS that is designated as an episode monitoring station will be identified in the description of SLAMS network which is on file as described in the network description.

Data from all SLAMS for an entire calendar year will be summarized and submitted to EPA by July 1 of the following year. The values determined and reported will be those values indicated in Appendix F to 40 CFR Part 58. Other information as required by Appendix F will also be reported in the annual report.

The Commonwealth of Virginia will operate monitoring stations other than those in the SLAMS Network. These

other stations will be termed Special Purpose Monitoring Stations (SPM) and will be used to supplement the SLAMS monitoring. The SPM stations will be used for purposes such as determining areas where permanent SLAMS need to be located, determining the effect of point sources, research, and determining acceptable growth patterns.

Data from SPM stations may be used for SIP purposes, such as support for control strategies, determination of attainment/nonattaiment, or model validation. Such data will have been collected in accordance with the criteria established by Subpart B of 40 CFR Part 58.

Beginning March 1 of each year, the Commonwealth of Virginia will review the air quality surveillance network to determine if there is a SLAMS in every location where there is a need for ambient air quality data or if all the stations in the SLAMS network are necessary. A report of the findings will be submitted to the EPA Regional Office by July 1 of each year along with a schedule to add stations to the SLAMS network, to relocate stations, or to eliminate stations as the case may be. The determination of the need to add, relocate or delete stations will be based on the network design criteria in Appendix D to 40 CFR Part 58 or references therein.

The site-specific SLAMS monitoring network description is not included in the SIP revision to allow for annual review and revision of the network without repeating the full SIP revision procedure.

II. Control Strategy Demonstration

This revision is an administrative change rather than a substantive change. Because the revision has no adverse impact on air quality, a modeling demonstration of attainment and maintenance of standards is not required.

III. Public Comments

No comments were received during the 30-day public comment period.

IV. EPA Evaluation

There are no policy issues involved with this revision other than the basis for the Administrator's approval; i.e., whether the revision submitted by the Commonwealth of Virginia meets the criteria of Section 110(a)(2) of the Clean Air Act and 40 C.F.R. 51.4, Public Hearings; 51.5, Submittal of Plans; preliminary review of plans; 51.6, Revisions; and 51.11, Legal Authority.

The revision submitted by the Commonwealth of Virginia meets the criteria of Section 110(a)(2) of the Clean Air Act and 40 C.F.R. Parts 51.4, 51.5, 51.6, and 51.11.

V. EPA Actions

In view of this evaluation, the Administrator approves the above-described revision to the Commonwealth of Virginia's SIP, which is intended to establish an Ambient Air Quality Monitoring Network as required under 40 CFR, Part 58 (State & Local Air Monitoring System or SLAMS).

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401–642)

Dated: November 26, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Virginia was approved by the Director of the **Federal Register** on July 1, 1980.

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart VV—Virginia

1. Section 52.2420 is amended by reserving paragraph (c)(37) and by adding a new paragraph (c)(38).

§ 52.2420 Identification of plan.

* * * * *

(c) The plan revision listed below was submitted on the date specified * * *

(38) A revision submitted by the Commonwealth of Virginia on March 24, 1980 which is intended to establish an Ambient Air Quality Monitoring Network.

[FR Doc. 80-37891 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 110

Health Maintenance Organizations; Requirements for a Health Maintenance Organization

Correction

In FR Doc. 80-33964 appearing on page 72524 in the issue of Friday, October 31, 1980, on page 72534, first column, tenth line from the bottom, "device" should read "service".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

Opening of Valentine National Wildlife Refuge, Nebraska, to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to sport fishing of Valentine National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES:

Clear Lake—January 1, 1981 through December 31, 1981
Dewey Lake—January 1, 1981 through December 31, 1981
Duck Lake—January 1, 1981 through December 31, 1981
Rice Lake—January 1, 1981 through December 31, 1981
Hackberry Lake—December 1, 1980 through December 31, 1981
Watts Lake—December 1, 1980 through December 31, 1981
West Long Lake—December 1, 1980 through December 31, 1981
Willow Lake—December 1, 1980 through December 31, 1981

FOR FURTHER INFORMATION CONTACT:

Robert M. Ellis, Refuge Manager, Fort Niobrara-Valentine NWR Complex, Valentine, Nebraska 69201, Telephone Number—AC 402/376-3789.

SUPPLEMENTARY INFORMATION:

§ 33.5 Special regulations; sport fishing for individual wildlife refuge areas.

Sport fishing is permitted on the Valentine National Wildlife Refuge, Nebraska, only on the areas designated

by signs as being open to fishing. The areas comprising Clear, Dewey, Duck, Rice, Hackberry, Watts, West Long, and Willow Lakes are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 10597 West Sixth Avenue, Lakewood, Colorado 80225. Sport fishing shall be in accordance with all State regulations and subject to the following special conditions:

1. Sport fishing with hook-and-line, bow-and-arrow, and handspear is permitted for the taking of all species of fish.

2. Sport fishing may be closed on specific lakes by posting for emergency or special management projects.

3. All recreational use of the refuge, including fishing, is permitted during daylight hours only. Camping is prohibited.

4. The use of possession of live or dead minnows or whole fish for bait, or the possession of any seine or net for capturing live minnows is prohibited. Parts of dead fish or minnows may be used as bait.

5. Boats propelled with oars, paddles, or electric motors may be used. Internal combustion type motors are prohibited, and may not be mounted on boats used on refuge lakes.

6. Cars and other motorized vehicles are not permitted on the ice.

7. Littering is not allowed and waste receptacles are available for public use.

8. All muskellunge (*Esox masquinongy*) and largemouth bass (*Micropterus salmoides*) caught in Watts Lake must be immediately returned to the lake.

9. All largemouth bass (*Micropterus salmoides*) caught in West Long Lake must immediately be returned to the lake.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which the Valentine National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A–107.

Robert M. Ellis,

Refuge Manager.

October 7, 1980.

[FR Doc. 80–37824 Filed 12–4–80; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 45, No. 236
Friday, December 5, 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

Agricultural Marketing Service

7 CFR Part 959

Onions Grown in South Texas; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would require fresh market shipments of onions grown in designated counties in South Texas to be inspected and meet minimum size and quality requirements. The regulation should promote orderly marketing of such onions and keep less desirable qualities and sizes from being shipped to consumers.

DATE: Comments due Febuary 4, 1981.

ADDRESS: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615. The Draft Impact Analysis relating to this proposed rule is available upon request from Mr. Porter.

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."

Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR Part 959) regulate the handling of onions grown in designated counties of South Texas. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The South Texas Onion Committee, established under the order, is responsible for its local administration.

This proposed regulation is based upon recommendations made by the committee at its public meeting in Laredo, Texas, On October 23, 1980. The recommmendations of the committee reflect its appraisal of the expected volume and composition of the 1981 early spring crop of South Texas onions and of the marketing prospects for the shipping season which is expected to begin about March 2, 1981.

The proposed grade and size requirements are similar to last season's and are designed to prevent onions of poor quality or undesirable sizes from being distributed in fresh market channels.

Thus, only onions that contain not more than 20 percent defects of U.S. No. 1 grade and are not packed or loaded on Sunday except for export could be shipped from March 2 through May 9, 1981. Again this season in order to provide more orderly marketing from all districts, the inspection and container requirements would be extended through June 13, 1981.

The container requirements would prevent the use of off-size or deceptive containers which could adversely affect the reputation and returns of South Texas onions. However, they would not preclude the use of containers customarily packed for the retail trade. The prohibition on packaging and loading onions on Sunday is intended principally to provide more orderly marketing by tailoring shipments from the production area more closely to the ability of receiving markets to accept marketings. Again this season handlers would be permitted, with the approval of the committee, to grade, package and load onions on Sunday for export, provided that they shut down packing and loading operations on the first working day after shipment for the same length of time as they operated on Sunday. This should prevent handlers who ship on Sunday for export from gaining a competitive advantage due to longer packing hours over handlers who do not have export orders.

Exceptions would be provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Up to 110 pounds of onions could be handled, other than for resale, per day without regard to requirements of this section in order to avoid placing an unreasonable burden on persons handling noncommercial quantities of onions.

The requirements with respect to special purpose shipments would allow the shipment of onions for experimental purposes or the use of containers including bulk bins which have been the subject of test shipments during past seasons, and would encourage exports by allowing the use of containers required for such purposes. Onions for canning and freezing are exempt under the legislative authority for this part. Shipments for relief or charity would be exempt since no useful purpose would be served by regulating such shipments.

It is proposed that § 959.320 (44 FR 65379, November 13, 1979) be terminated and a new § 959.321 be added as follows:

§ 959.321 Handling regulation.

During the period March 2 through June 13, 1981, no handler may package or load onions on Sunday or handle any onions except red varieties, unless they comply with paragraphs (a) through (d) or (e) or (f) of this section. However, the requirements of paragraphs (a) and (b) and the Sunday prohibition shall terminate at 11:59 p.m. on May 9, 1981.

(a) *Grade requirements.*

Not to exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Application of tolerances in U.S. onion standards shall apply to in-grade lots.

(b) *Size requirements.*

(1) "Small"—1 to 2¼ inches in diameter, and limited to whites only;

(2) "Repacker"—1¾ to 3 inches in diameter, with 60 percent or more 2 inches in diameter or larger;

(3) "Medium"—2 to 3½ inches in diameter; or

(4) "Jumbo"—3 inches or larger in diameter.

(5) Tolerances for size in the U.S. onion standards shall apply except that for "repacker" and "medium" sizes not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specified. Application of tolerances in the U.S. onion standards shall apply.

(c) *Container requirements.* Except as provided in paragraph (f), only the following containers may be used:

(1) 25-pound bags, with an average net weight in any lot of not more than 27½ pounds per bag, and with inside dimensions not larger than 29 inches by 31 inches; or

(2) 50-pound bags, with an average net weight in any lot of not more than 55 pounds per bag, and with inside dimensions not larger than 33 inches by 39½ inches.

(3) These container requirements shall not be applicable to onions sold to Federal agencies or for export.

(d) *Inspection.*

(1) No handler may handle any onions regulated hereunder, except pursuant to paragraphs (e) or (f)(1) of this section, unless an inspection certificate has been issued by the Texas-Federal Inspection Service covering them and the certificate is valid at the time of shipment.

(2) No handler may transport by motor vehicle or cause such transportation of any shipment of onions for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or by documentary evidence on forms furnished by the committee identifying truck lots to which a valid inspection certificate is applicable and a copy of such inspection certificate or committee document is surrendered upon request to authorities designated by the committee.

(3) For purposes of operation under this part each inspection certificate or committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

(4) Handlers shall pay assessments on all assessable onions according to the provisions of section 959.220.

(e) *Minimum quantity exemption.* Any handler may handle, other than for resale, up to, but not to exceed 110 pounds of onions per day without regard to the requirements of this section, but this exemption shall not apply to any shipment or any portion thereof of over 110 pounds of onions.

(f) *Special purpose shipments.* (1) The minimum grade, size, quality, container, and inspection requirements set forth in paragraphs (a) through (d) shall not be applicable to shipments of onions for charity, relief, canning and freezing if handled in accordance with paragraph (g) of this section.

(2) Onions may be packed in 50-pound cartons or in 2, 3 or 5 pound containers customarily used for the retail trade. Such shipments shall be exempt from paragraph (c) of this section but must meet the provisions of paragraphs (a), (b) and (d) or paragraphe (e) and be handled in accordance with paragraph (g) of this section.

(i) Shipments of such containers shall not exceed 10 percent of a handler's total weekly onion shipments.

(ii) The average gross weight per lot of onions packed in master containers shall not exceed 115 percent of the designated net contents.

(iii) The average net weight per lot of 50-pound cartons shall not exceed 55 pounds.

(3) *Experimental shipments.*

(i) Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches × 7½ inches × 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Each container shall have a new perforated polyethylene liner at least 2 mils in thickness. Also, onions may be shipped in 40-pound cartons, upon approval of the committee. Such experimental shipments shall be exempt from paragraph (c) of this section but shall not exceed ten percent of a handler's total weekly onion shipments and shall be handled in accordance with safeguard provisions of § 959.54 and paragraph (g) of this section. The receiver shall furnish the committee with a report on the arrival condition of each shipment.

(ii) Upon approval of the committee, onions may be shipped for other experimental purposes exempt from regulations issued purusant to §§ 959.42, 959.52 and 959.60, provided they are handled in accordance with safeguard provisions of § 959.54 and paragraph (g) of this section.

(4) *Export shipments.*

(i) Upon approval of the committee, the prohibition against packaging or loading onions on any Sunday may be modified or suspended to permit the handling of onions for export provided such handling complies with the procedures and safeguards specified by the committee.

(ii) Following approval, if the handler grades, packages and ships onions for export on any Sunday, such handler shall on the first weekday following shipment, cease all grading, packaging and shipping operations for the same length of time as the handler operated on Sunday. Upon completion of such shipments, the handler shall report thereon as prescribed by the committee.

(iii) Export shipments shall also be exempt form all container requirements of this section.

(5) *Onions failing to meet requirements:* Onions failing to meet the grade, size and container requirements of this section, and not exempt under paragraphs (e) or (f) of this section, may be handled only pursuant to § 959.126. Such onions not handled in accordance with paragraph (g) of this section shall be mechanically mutilated at the packing shed rendering them unsuitable for fresh market.

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, or experimental purposes or onions packed in 50-pound cartons or 2, 3 or 5 pound containers customarily packed for the retail trade shall:

(1) Apply to the committee for an obtain a Certificate of Privilege to make such shipments:

(2) Furnish reports of each shipment made under the applicable Certificate of Privilege;

(3) Such reports, in accordance with § 959.80, shall be furnished to the committee in such manner, on such forms and at such times as it may prescribe. Each handler shall maintain records of such shipments pursuant to § 959.80(c), and the records shall be subject to review and audit by the committee to verify reports thereon.

In addition to the above, each handler making shipments for canning of freezing shall:

(4) Weigh or cause to be weighed each shipment prior to, or upon arrival at the canner or freezer.

(5) Attach a copy of the weight ticket to a completed copy of the Certificate of Privilege and return both promptly to the committee office.

(6) Bill each shipment directly to the applicable processor.

(7) Each canner or freezer who receives cull onions shall make available at its business office at any reasonable time during business hours, copies of all applicable purchase orders, sales contracts, or disposition documents for examination by the Department or by the committee, together with any other information which the committee or the Department may deem necessary to enable it to determine the disposition of the onions.

(h) *Definitions.* "U.S. onion standards" mean the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 2851.3195–2851.3209), or the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) (7 CFR 2851.2830–2851.2854), whichever is applicable to the particular variety, or variations thereof specified in this section. The term "U.S. No. 1" shall have the same meaning as set forth in these standards.

All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 143, as amended, and this part.

(i) *Applicability to imports.* Onions imported during the period March 16 through May 9, 1981, will be in most direct competition with onions produced in South Texas and regulated under Marketing Order No. 959, as amended. Therefore, under Section 8e of the act and Section 980.117 "Import Regulations" such imported onions shall have not more than 20 percent defects of U.S. No. 1 grade and be at least 1 inch in diameter for white varieties and at least 1¾ inches in diameter for all other varieties. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Applications of tolerance in the U.S. Grade Standards shall apply to in-grade lots.

Dated: December 2, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-37764 Filed 12-4-80; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1280

[Docket No. WR-1]

Wheat and Wheat Foods Research and Nutrition Education; Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The proposed regulation establishes the procedure for collecting assessments from and defines the responsibilities of wheat end product manufacturers under the Wheat and Wheat Foods Research and Nutrition Education Order. The Order which was issued May 12, 1980 and published in the **Federal Register** May 16, 1980 (45 FR 32572) is authorized by the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401 *et. seq.).*

DATE: Comments must be received by January 19, 1981.

ADDRESSES: Five copies of written exceptions and/or suggested changes should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: W. David Spalding, Livestock, Poultry, Grain, and Seed Division, AMS, USDA, Washington, D.C. 20250, Phone: (202) 447-2068.

SUPPLEMENTARY INFORMATION: The Wheat Industry Council has formulated and submitted to the Secretary of Agriculture for approval the following regulations which propose: (1) the policy and objectives of the Council, (2) the payment of U.S. Department of Agriculture referendum and administrative costs, (3) the designation of wheat end product manufacturers for paying and reporting, (4) a method for obtaining refunds, (5) end product manufacturer records and reports, and (6) related matters.

The regulations begin by defining terms used in the Act and Order and include terms newly used in this subpart. Newly defined terms include "scheduled for payment" and "distributor of processed wheat." These terms provide a further understanding of the assessment, collection, and remittance process.

The overall policy and objectives of the Council are stated in § 1280.306. The Council is directed to show no undue preference to any of the various industry segments.

The enabling legislation for the Wheat Industry Council provides that USDA costs incurred in conducting the referendum and in the administration of the Order will be paid from end product manufacturer assessments. Section 1280.309 directs the Council to pay these costs when determined periodically by the Secretary.

The major portion of these regulations concerns the assessment, the payment, the collection, and remittance by wheat end product manufacturers of up to 5 cents per hundredweight of processed wheat purchased. However, during the first 2 years of the program the assessment rate will not exceed 1 cent per hundredweight.

Section 1280.316 details those end product manufacturers and end products that are exempt from the payment of the assessment. Retail bakers as defined in the regulation, including any end product manufacturer who does not purchase more than 2,000 hundredweights of processed wheat per year for use in the manufacture of end products, are exempt.

The Act and the Order contain specific requirements that refund provisions be provided for those end product manufacturers who do not wish to participate in the program. The act and the Order require that a summary of the Council's annual budget be published in the **Federal Register** at least 60 days prior to the start of the budget year. Each registered end product manufacturer will be mailed a copy of the budget summary and shall have 60 days from the date of publication of the summary to reserve the right to seek refunds.

Section 1280.322 describes the method the end product manufacturer should follow when seeking a refund. All applications for refunds must be submitted with proof that an assessment has been paid to the Wheat Industry Council within 60 days after the end of the quarter in which the assessment accrued and payment of the refund must be made by the Wheat Industry Council within 60 days of the receipt of the request.

All end product manufacturers not exempt under § 1280.316 as retail bakers or otherwise are required to register with the Wheat Industry Council. Upon registration, end product manufacturers will receive an identification number to be used with required reports and official communications. Registration of end product manufacturers is covered in § 1280.325.

End product manufacturers are required to submit, for each reporting period (calendar quarter or 3-month accounting period unless otherwise approved by the Council), reports with all assessments detailing the amount of processed wheat purchased, the amount of processed wheat on which assessments have been paid, the amount of processed wheat purchased for use in exempt end products and the amount of processed wheat on which assessments are due. Additionally end product manufacturers are required to report the names and addresses of processors, distributors of processed wheat or other entities from whom processed wheat was purchased or transferred and the amount purchased or transferred from each such entity.

All end product manufacturers will maintain records for at least 2 years beyond the fiscal period of their applicability. These records are required to be available for inspection by employees of the Department of Agriculture or the Wheat Industry Council to insure compliance with the provisions of the Order.

The public is invited to submit written exceptions or recommendations regarding the proposed regulations to the Hearing Clerk, Room 1077—South Building, U.S. Department of Agriculture, Washington, D.C. 20250, no later than (45 days after publication in the **Federal Register**), to be sure of consideration. Each person submitting comments, suggestions, or objections regarding the proposed regulations shall include the person's name and address and give reasons for any suggested

changes. Copies of all written communications received will be available for examination by interested persons at the office of the Hearing Clerk during regular business hours.

In accordance with the above, it is proposed to amend 7 CFR Part 1280 by adding a new Subpart as follows:

PART 1280—WHEAT AND WHEAT FOODS RESEARCH AND NUTRITION EDUCATION ORDER

Subpart—Rules and Regulations

Definitions

Sec.

1280.300 Terms defined.

General

1280.305 Communications.
1280.306 Policy and objectives.
1280.307 Contracts.
1280.308 Procedure.
1280.309 USDA costs.

Assessments, Collections and Remittances

1280.315 Levy of assessments.
1280.316 Exemptions.
1280.317 Reporting period and payment.

Refunds

1280.320 Budget summaries, refund elections, and election periods.
1280.321 Eligibility for refunds.
1280.322 Procedure for obtaining refunds.

Registration and Reports

1280.325 Registration of end product manufacturers.
1280.326 Reports.

Records

1280.330 Retention of records.
1280.331 Availability of records.
1280.332 Confidentiality.

Miscellaneous

1280.335 Personal liability.

Authority: Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95–113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401–3417.

Definitions

§ 1280.300 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall be those definitions of terms defined in the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401 et seq.), hereinafter called the Act, and the Wheat Foods Research and Nutrition Education Order (7 CFR § 1280.101 et seq.), hereinafter called the Order.

(a) *Wheat.* "Wheat" means all classes of wheat grains grown in the United States.

(b) *Processed wheat.* "Processed wheat" means the wheat-derived content of any substance (such as cake mix or flour) produced for use as an ingredient of an end product by changing wheat grown within the United States in form or character by any mechanical, chemical, or other means.

(c) *End product.* "End product" means any product which contains processed wheat as an ingredient and which is intended, as produced, for consumption as human food, notwithstanding any additional incidental preparation which may be necessary by the ultimate consumer.

(d) *Processor.* "Processor" means any person who commercially produces processed wheat within the United States.

(e) *End product manufacturer.* "End product manufacturer" means any person who commercially produces an end product within the United States, but such term shall not include such persons to the extent that they produce end products on the premises where such end products are to be consumed by an ultimate consumer, including, but not limited to, hotels, restaurants, and institutions, nor shall such term include persons who produce end products for their own personal, family or household use.

(f) *Research.* "Research" means any type of research to advance the nutritional quality, marketability, production, functional quality or other qualities of wheat, processed wheat, or end products.

(g) *Nutrition education.* "Nutrition education" means any action to disseminate to the public information resulting from research concerning the economic value or nutritional benefits of wheat, processed wheat, and end products.

(h) *Wheat Industry Council or Council.* "Wheat Industry Council" or "Council" means the administrative body established pursuant to § 1280.130 of the Order.

(i) *Fiscal period.* "Fiscal period" means the calendar year or such other period as the Council may determine.

(j) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

(k) *Person.* "Person" means any individual, partnership, corporation, association or other entity.

(l) *Part and subpart.* "Part" means 7 CFR Part 1280, containing rules, regulations, orders, supplemental orders and similar matters concerning the Wheat and Wheat Foods Research and Nutrition Education Act. "Subpart" means any portion or segment of such part.

(m) *Retail baker.* "Retail baker" means an end product manufacturer who sells end products directly to the ultimate consumer: *Provided,* That such term shall not include any end product manufacturer who derives less than 10 per centum of gross end product sales revenues from sales to ultimate consumers or who derives 10 per centum or more of gross food or food product sales revenue from the sale of such products manufactured or produced by others.

(n) *Intra-company transfers.* "Intra-company transfers" means sales or transfers of processed wheat for use in the manufacture of end products to end product manufacturers from related companies or divisions of the same company.

(o) *Related companies or divisions of the same company.* "Related companies or divisions of the same company" means subsidiaries, affiliates, or divisions of an end product manufacturer which are controlled by, controlling, or under common control with, such end product manufacturer.

(p) *Control.* "Control", including the terms "controlling", "controlled by", and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person, whether through the ownership of voting securities, by contract, or otherwise.

(q) *Plans and projects.* "Plans and projects" means those research and nutrition education plans, studies or projects pursuant to § 1280.145 of the Order.

(r) *Scheduled for payment.* "Scheduled for payment" means set aside on the books and records of an end product manufacturer, so that once an end product manufacturer has scheduled for payment the assessment on processed wheat, at the point of the original purchase or intra-company transfer of such processed wheat, it will not be required to maintain further records of subsequent intra-company transfers of such processed wheat: Provided, That such end product manufacturer must maintain records of such transfers to the extent necessary to support any claim for exemption from assessments under § 1280.316(b).

(s) Distributor of processed wheat. "Distributor of processed wheat" means any person who sells processed wheat to an end product manufacturer.

General

§ 1280.305 Communications.

Communications in connection with the Order shall be addressed to the

Wheat Industry Council at it business address.

§ 1280.306 Policy and objectives.

(a) It shall be the policy of the Wheat Industry Council to carry out an effective and continuous coordinated program of research and nutrition education, designed to improve and enhance the quality, and make the most efficient use, of American wheat, processed wheat, and wheat end products, and to inform the people of the United States about the nutritional benefits of wheat foods.

(b) It shall be the objective of the Wheat Industry Council to carry out plans and projects which will provide the maximum benefits to the wheat and wheat foods industry and no undue preference shall be given to any of the various industry segments.

(c) It shall be the objective of the Wheat Industry Council in carrying out this program to promote the health and well being of consumers.

§ 1280.307 Contracts.

The Council, with the approval of the Secretary, may enter into contracts with persons for the development and conduct of plans or projects authorized by the Order. Contractors shall agree to comply with the provisions of the Order, this subpart, and applicable provisions of the U.S. Code relative to contracting with the U.S. Department of Agriculture. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Council shall be subject to the provisions of this subpart.

§ 1280.308 Procedure.

The organization of the Wheat Industry Council and the procedure for conducting meetings of the Council shall be in accordance with the By-Laws of the Council.

§ 1280.309 USDA costs.

Pursuant to § 1280.150(b) of the Order, the Council shall reimbursement those referendum and administrative costs incurred by the U.S. Department of Agriculture for the conduct of it duties under the Act and the Order as determined periodically by the Secretary. Payment shall be due promptly after the billing for such costs.

Assessments, Collections and Remittances

§ 1280.315 Levy of assessments.

(a) An assessment of 5 cents per hundredweight of processed wheat, or such lesser amount as set by the Council and approved by the Secretary, hereinafter called the assessment, is hereby levied on each hundredweight of processed wheat purchased (including intra-company transfers of processed wheat with respect to which no assessment has been paid or scheduled for payment) on and after (the date assessments begin) by nonexempt end product manufacturers for use in the manufacture of nonexempt end products as specified in § 1280.315(b): *Provided,* That the assessment rate for the first two years during which assessments are in effect shall not exceed 1 cent per hundredweight. No person shall be required to pay more than one assessment with respect to the same processed wheat, whether or not such processed wheat is further processed by such person.

(b) The following end products in which wheat is a major or characterizing ingredient, as described in the Standard Industrial Classification (SIC) codes published by the U.S. Department of Commerce, shall be subject to the assessment levied hereunder.

SICNo.
2032—Macaroni, canned
Ravioli, canned
Spaghetti, canned
2038—Baked goods, frozen
Pies, frozen (except meat)
Pizza, frozen
Spaghetti and meat balls, frozen
Waffles, frozen
2041—Dough, biscuit: canned
Doughs, refrigerated
2043—Breakfast foods, cereal (wheat based)
Wheat flakes
2045—Dough, biscuit: Canned
Doughs, refrigerated
2051—Bagels
Bakery products, partially cooked, except frozen (frozen are included in SIC No. 2038)
Bakery products, "perishable": Bread, cakes, doughnuts, pastries, etc. (including croutons)
Biscuits, baked: Baking powder and raised
Bread, brown: Boston and other—canned
Buns (bakery products)
Charlotte Russe (bakery products)
Crullers
Knishes
Pastries: Danish, French, etc.
Pies, except meat pies
Rolls (bakery products)
Sweet yeast goods
2052—Bakery products, "dry": biscuits, crackers, pretzels, etc.
Biscuits, baked: Dry, except baking powder and raised biscuit (which are included in SIC No. 2051)
Cookies
Crackers: Graham, soda, etc.
Saltines
Zwieback, machine-made
2098—Macaroni and products, dry: Including alphabets, rings, seashells, etc.
Noodles: Egg, plain and water
Spaghetti, except canned (canned is included in SIC No. 2032)
Vermicelli
2099—Pizza, refrigerated, except frozen (frozen is included in SIC No. 2038)

§ 1280.316 Exemptions.

(a) The following persons shall be exempt from the assessment levied under § 1280.315:

(1) Retail bakers, as defined in § 1280.300(m), including any end product manufacturer who does not purchase more than 2,000 hundredweights of processed wheat per year for use in the manufacture of end products; and

(2) End product manufacturers who manufacture end products exempted under § 1280.316(b) *Provided,* That such end product manufacturers shall be exempt only to the extent of the processed wheat purchased for use in the manufacture of such exempt end products.

(b) "End products" in which wheat is not a major or characterizing ingredient and not listed in § 1280.315(b) shall be considered exempt end products for the purposes of § 1280.316(a)(2). Such end products shall include, but shall not be limited to, the following end products described in the Standard Industrial Classification (SIC) codes published by the U.S. Department of Commerce:

SICNo.
2032—Meat pies, canned
2034—Soup mixes and powders
2035—Sauces
2038—Frozen dinners
2052—Cones, ice cream
2085—Distilled, rectified, and blended liquors

§ 1280.317 Reporting period and payment.

(a) For the purpose of the payment of assessments, either a calendar quarter or a 3-month accounting period shall be considered the reporting period; however, other accounting periods may be used when approved by the Council in writing. Each end product manufacturer not exempt under § 1280.316(a) shall register his reporting period with the Council. All changes in reporting periods shall be requested in writing and subject to approval by the Council.

(b) Each end product manufacturer shall pay the required assessment pursuant to § 1280.315 directly to the Wheat Industry Council, for each reporting period, on or before the thirtieth day following the end of such period.

Thus, for example, if the initial reporting period were April 1, 1980, to June 30, 1980, on April 1, 1980, end product manufacturers not exempt under § 1280.316 would begin to calculate and set aside on their books and records the amount of the assessment that would be payable for

such period. The Council's first fiscal period would then begin on July 1, 1980, and the initial assessment would be required to be remitted on or before July 30, 1980.

Payment shall be in the form of a check, draft or money order payable to the Wheat Industry Council and shall be accompanied by a report pursuant to § 1280.326(a).

(c) In the event of an end product manufacturer's death, bankruptcy, receivership, or incapacity to act, the representative of the end product manufacturer or his estate, or the person acting on behalf of creditors, shall be considered the end product manufacturer for the purposes of this subpart.

Refunds

§ 1280.320 Budget summaries, refund elections, and election periods.

(a) Under § 1280.140(e) of the Order, the Council is required to prepare a summary of its annual budget, including a brief general description of research and nutrition education programs contemplated therein (hereafter the budget summary). Upon approval by the Secretary, the budget summary is to be published promptly in the **Federal Register.** The Council's initial budget summary, for its initial fiscal period, shall be published at least 60 days prior to the date when the initial assessments are due to be remitted under § 1280.315. In subsequent fiscal periods the budget summary shall be published at least 60 days prior to the beginning of the fiscal period.

(b) With the publication of each budget summary under § 1280.320(a) (or amended budget summary under § 1280.320(d)), the Council shall promptly mail a copy thereof to each registered end product manufacturer.

(c) Each such rigistered end product manufacturer shall have 60 days each year from the date of publication of the budget summary in the **Federal Register** (hereafter referred to as the refund election period) within which to elect to reserve the right to seek refunds under § 1280.322 of assessments paid with respect to the fiscal period covered by such budget summary, whether or not such person has personally received a copy of the budget summary.

(d) Ordinarily, one budget summary for each fiscal period will be published at least 60 days prior to the beginning of the fiscal period. However, in the event of midyear amendments to the budget so significant as to substantially change the nature of the Council's ongoing plans and projects, an amended budget summary, upon approval by the Secretary, will be published promptly in the **Federal Register.** Thereafter, all nonexempt end product manufacturers, whether or not they have a refund election then in effect, will be given 60 days from the date of such publication within which to elect to reserve the right to seek refunds under § 1280.322 of assessments paid with respect to the balance of the fiscal period then in effect including the quarter in which the amended budget summary was published.

(e) Nonexempt end product manufacturers who wish to elect to reserve the right to request refunds of assessments under § 1280.322 shall so indicate to the Council by letter, which shall be transmitted to the Council by registered or certified mail, and which must be postmarked not later than the sixtieth day of the applicable refund election period (or the next succeeding business day if such sixtieth day falls on a Saturday, Sunday or Holiday).

§ 1280.321 Eligibility for refunds.

Only those end product manufacturers who have made the described election pursuant to § 1280.320 shall be eligible for refunds of assessments paid with respect to the fiscal period, or (in the case of budget amendments under § 1280.320(d)) portion thereof, to which such refund election applies.

§ 1280.322 Procedure for obtaining refunds.

Any end product manufacturer who has been subject to and has paid an assessment, but who has elected to reserve the right to seek a refund, may obtain a refund of the assessment for any quarter or other reporting period in the following manner:

(a) Every refund request must be made by submitting to the Council a completed Wheat Industry Council refund application form. The form shall be obtained by written request to the Council and shall require the following information:

(1) The end product manufacturer's name(s), address(es), and identification number;

(2) The number of hundredweights of processed wheat on which a refund is requested and and the total amount of the refund request;

(3) The date or dates on which assessments were paid;

(4) The end product manufacturer's signature; and

(5) An affirmation that the end product manufacturer has made the necessary election to reserve the right to request refunds.

A separate refund application must be filed for assessments paid in each quarter.

(b) Every refund application must be mailed to the Wheat Industry Council within 60 days after the end of the quarter or other reporting period during which the assessement obligation accrued.

(c) Within 60 days following the date of receipt by the Council of each properly executed refund application, and proof of payment of the assessment, the Council shall remit the refund.

Registration and Reports

§ 1280.325 Registration of end product manufacturers.

(a) All end product manufacturers not exempt under § 1280.316 shall, prior to (the beginning date of assessments), register with the Wheat Industry Council by filing a registration statement. Registered end product manufacturers will receive an identification number which must appear on all required reports and official communications with the Wheat Industry Council.

(b) End product manufacturers who are exempt from assessments under § 1280.316 will not be required to register with the Council. However, any such exempt end product manufacturer receiving a registration form shall return the form to the Council indicating thereon his exempt status and the basis for it. Such exempt end product manufacturers shall not be required to submit further proof of their exempt status except upon specific written request of the Council.

(c) New businesses subject to this subpart beginning after (the beginning date of assessments) shall register with the Wheat Industry Council within 30 days following the beginning of operations.

(d) Each registration statement hereunder shall include:

(1) Name and address of the end product manufacturer;

(2) Name of individual(s) responsible for filing reports with the Wheat Industry Council;

(3) Type of reporting period desired; and

(4) For exempt end product manufacturers, spaces for indicating exempt status, the basis for such exempt status, and whether the end product manufacturer wishes to waive exempt status.

(e) Any person exempt under §1280.316 may waive such exemption, upon application to and approval by the Council, and thereafter will be treated as a nonexempt end product

manufacturer under this subpart unless and until such person requests that such exemption be reinstated.

§ 1280.326 Reports.

(a) End product manufacturer reports.

(1) Each nonexempt end product manufacturer shall make reports to the Wheat Industry Council on forms made available or approved by the Council. Each such end product manufacturer shall prepare a separate report form for each reporting period, which shall be mailed to the Council within 30 days after the close of the reporting period, and which shall contain the following information:

(i) Date of report;

(ii) Reporting period covered by report;

(iii) Name and address of end product manufacturer and identification number;

(iv) Total number of hundredweights of processed wheat purchased (including intra-company transfers), total number of hundredweights of processed wheat purchased or transferred on which an assessment was previously collected, total number of hundredweights of processed wheat purchased or transferred for use in the manufacture of end products exempted under § 1280.316(b), and total number of hundredweights of processed wheat on which an assessment is due;

(v) The names and addresses of processors, distributors of processed wheat, or related companies or divisions of the same company, from whom processed wheat was purchased or transferred and the amount purchased or transferred from each such entity;

(vi) The total amount of assessment due for processed wheat purchased or transferred during the reporting period and remitted with the report; and

(vii) Such other information as may be required by the Council.

(2) End product manufacturer reports shall be filed each reporting period until such time as the Wheat Industry Council is notified in writing that the end product manufacturer has ceased to do business.

(b) In order to enable end product manufacturers to calculate the amount of processed wheat they have purchased, persons selling or transferring processed wheat in combination with other ingredients to such end product manufacturers for use in the manufacture of end products shall disclose to such end product manufacturers the amount or proportion of processed wheat contained in such products, plus or minus 3 per centum. End product manufacturers shall be responsible for informing persons selling or transferring to them processed wheat in combination with other ingredients of such persons' obligations under this subpart to disclose the amount or proportion of processed wheat therein, plus or minus 3 per centum.

(c) The Wheat Industry Council may require all persons subject to section 1705(c) of the Act to make reports as needed for the enforcement and administration of this part.

Records

§ 1280.330 Retention of records.

Each person required to make reports to the Wheat Industry Council pursuant to this subpart shall maintain and retain for at least 2 years beyond the fiscal period of their applicability:

(a) One copy of each report submitted to the Council; and

(b) Such other records as are necessary to verify reports submitted to the Council.

§ 1280.331 Availability of records.

Each end product manufacturer subject to the provisions of this subpart, and all persons subject to section 1705(c) of the Act, shall make available for inspection and copying by authorized employees of the Wheat Industry Council and/or the Secretary, during regular business hours, such information as is appropriate and necessary to verify compliance with this subpart.

§ 1280.332 Confidentiality.

(a) All information obtained by the Wheat Industry Council, all employees of the Council, officers and employees of the Department of Agriculture, or any person under contract to the Council or otherwise acting on behalf of the Council, from the books, records and reports of persons subject to this subpart, and all information with respect to refunds of assessments made to individual end product manufacturers, shall be kept confidential in the manner, and to the extent, provided for in § 1280.162 of the Order.

(b) In order to protect confidential information that may reveal trade secrets or have competitive value, access to information from the books, records and reports of persons subject to this subpart shall be limited to persons within the class described in § 1280.332(a) who have a specific need for such information in order to administer the provisions of the Order and of this subpart.

Miscellaneous

§ 1280.335 Personal liability.

No member, alternate member or employee of the Council in the performance of his or her duties with the Council shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, by such member, alternate or employee, except for acts of dishonesty or willful misconduct.

Done at Washington, D.C. on December 2, 1980.

James E. Springfield,

Acting Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-37864 Filed 12-4-80; 8:45 am]

BILLING CODE 3410-02-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3, 145, and 147

Proposed Registration Forms and Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed forms and rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has today adopted final rules which relate to the registration of futures commission merchants, floor brokers, associated persons, commodity trading advisors and commodity pool operators. Those rules require that each applicant for registration as an associated person ("AP") be "sponsored" by a futures commission merchant ("FCM") which must screen that person's application and certify that it is accurate and complete to the best of the FCM's knowledge, information, and belief. The new regulations also require the fingerprinting of, and the filing of a Form 8-R by, certain Commission registrants or their principals; some of these registrants and principals are, however, exempted from those requirements.

The Commission is now proposing for public comment the revised Form 8-R, new Forms 8-S and 8-T, and certain additional regulations which the Commission believes are necessary to implement fully the regulations it has adopted today.

DATES: Comments on the proposed forms and rules should be submitted by February 3, 1981.

ADDRESS: Send comments to: Commodity Futures Trading

Commission, 2033 K Street NW., Washington, D.C. 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director for Registration, or Kenneth M. Rosenzweig, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-9703 or 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 20, 1980, the Commission proposed substantial revisions to its registration regulations and, in particular, to the requirements governing the registration of associated persons. 45 FR 18356. Based upon the entire record in that proceeding, the Commission has today adopted final regulations which, along with other of its registration regulations, have been consolidated in a new Part 3 of Chapter I, Title 17 of the Code of Federal Regulations.

The Commission indicated when it issued its proposal that the revised Form 8-R and other related matters would be published for public comment at a later date. The Commission is, therefore, now proposing the revised Form 8-R, new Forms 8-S and 8-T, and certain additional regulations which the Commission believes are necessary to implement fully those newly adopted regulations.

II. Proposed Rules and Forms

A. Proposed Forms 8-R, 8—S and 8-T

The revised Form 8-R would retain much of the existing Form 8-R; however, certain stylistic changes have been proposed which, the Commission believes, will simplify the Form and reduce the filing burdens for applicants and registrants and streamline its processing by the Commission.[1] In addition, a number of the questions and instructions would be modified to conform to both the newly adopted and the proposed regulations and to apprise affected individuals of their filing obligation under the regulations.

The proposed Form 8-R includes a Sponsor's Certification—*i.e.*, a certification by the futures commission merchant which is sponsoring the registration of an associated person that it has complied with the requirements of §§ 3.12(c)(1)(i)-(iii) and, where applicable, §§ 3.12(d) (1) and (3). The Sponsor's Certification also contains an acknowledgement by the officer, general partner, or sole proprietor who is signing it on behalf of the sponsoring FCM, that the information contained in the Form 8-R has been provided to allow that FCM to verify the publicly available information in the Form 8-R and that the firm will take such measures as are necessary to prevent the unwarranted dissemination of that information.[2]

Proposed Form 8-S is a Certificate of Special Registration which is designed to effect the special registration provisions for certain associated persons contained in § 3.12(d). In addition, the Commission is proposing a Notice of Termination (Form 8-T) to implement the provisions of § 3.31(c). The Commission is also proposing to require FCMs, commodity trading advisors ("CTAs") and commodity pool operators ("CPOs") to report the termination of a principal[3] to the Commission.[4] All such reports would have to be filed with the Commission on Form 8-T or on a Uniform Termination Notice for Securities and Commodity Industry Registration (Form U-5).[5]

B. The Privacy Act

In addition to the final rules being adopted today and the rules and forms that are herein being proposed for public comment, the Commission is today publishing separately a notice of its intention to alter certain of the systems of records it maintains pursuant to the Privacy Act of 1974 [6] and is proposing for public comment a new routine use [7] for those systems of records.

C. The Freedom of Information Act and the Government in the Sunshine Act

Commission regulation 145.5 [8] provides that certain of the Commission's records are generally "nonpublic" and are therefore exempt from required disclosure under the Freedom of Information Act.[9] With respect to the applications for registration and biographical supplements filed on Form 8-R by persons subject to regulation by the Commission, § 145.5(f)(2) and § 145.6(b) [10] specify that some of the information submitted in connection therewith—*e.g.*, residence address, social security number, date and place of birth and the required documentation of certain judicial or regulatory sanctions—may be treated as nonpublic. Pursuant to Commission regulation 145.9,[11] a petition for confidential treatment can be filed with respect to other information on the Form 8-R. Commission regulation 147.3(b)(6)(ii) [12] accords similar treatment to that information under the Government in the Sunshine Act [13] by allowing for the closure of normally open Commission meetings [14] where disclosure of that information would constitute a clearly unwarranted invasion of personal privacy. Consistent with the Notice which accompanies the proposed Forms, the Commission is proposing to treat the above-described information and an individual's fingerprint card as non-public in those circumstances.

D. Other proposed rules

The Commission is proposing as § 3.30 a rule which would make explicit a registrant's or principal's continuing duty to furnish the Commission with a current address for the purpose of receiving Commission communications.[15]

The Commission is also proposing to amend § 3.11 to provide that before registration can be granted, an applicant for initial or renewal registration as a floor broker must have trading privileges on a board of trade which has been designated as a contract market by the Commission.[16] The Commission believes that its proposal is consistent with long-standing practices of the industry and with the intent and understanding of Congress when it adopted relevant sections of the Act.[17]

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[1] For example, the proposed Form 8-R would eliminate the need for floor brokers to file a separate Schedule A as a supplement to the Form 8-R.

[2] Proposed § 3.12(c)(1)(iv). Nothing in the proposal, however, is intended to preclude a sponsoring FCM from following the practice commonly used for registration screening in the securities industry, which is to hire investigative agencies to perform some or all of the screening functions. *See* 45 FR 18356, 18357 (March 20, 1980).

[3] Section 3.1(a).

[4] Proposed § 3.31(c)(2).

[5] Section 3.31(c)(3).

[6] 5 U.S.C. 552a.

[7] *See* 5 U.S.C. 552a(a)(7).

[8] 17 CFR 145.5.

[9] 5 U.S.C. 552.

[10] 17 CFR 145.6(b). Section 145.6 was recently amended to reflect the establishment of the Commission's Freedom of Information, Privacy and Government in the Sunshine Acts compliance staff. 45 FR 26952, 26953-54 (April 22, 1980).

[11] 17 CFR 145.9.

[12] 17 CFR 147.3(b)(6)(ii).

[13] 5 U.S.C. 552b.

[14] 17 CFR 147.3(a).

[15] A similar rule was recently proposed as § 1.14a. 45 FR 42324, 42330 (June 24, 1980). Unlike proposed § 1.14a, but consistent with the rules adopted today, proposed § 3.30 includes a reference to principals of registrants.

[16] Proposed § 3.11(a). An applicant for floor broker registration, or for renewal thereof, whose trading privileges are pending may nonetheless apply for registration. Upon receipt by the Commission of notification of such privileges, registration may then be granted. *See* proposed Form 8-R, Item 13.

[17] *See Hearings on H.R. 6772 Before the Senate Comm. on Agriculture and Forestry*, 74th Cong., 2d Sess. 82 (1936) (testimony of James J.Coughlin, President, Brokers Association of the Chicago Board of Trade) (floor broker is a member of an exchange); *Hearings on H.R. 3009 Before the House Comm. on Agriculture*, 74th Cong., 1st Sess. 22, 27 (1935)

Footnotes continued on next page

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 2, 4d, 4e, 4f, 4k, 4m, 4n, and 8a thereof, 7 U.S.C. 2 and 4, 6d, 6e, 6f, 6k, 6m, 6n, and 12a, *as amended,* 92 Stat. 865 *et seq.,* and the authority contained in 5 U.S.C. 552 and 552b, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations by amending §§ 3.11, 3.12, 3.31, 145.5, 145.6, and 147.3, and by adding § 3.30, to amend Commission Form 8–R, and to add Commission Forms 8–S and 8–T, as follows:

PART 3—REGISTRATION

1. Section 3.11 is proposed to be amended as follows:

§ 3.11 Registration of floor brokers.

(a) *Trading privileges required.* No person who applies for registration, or for renewal of registration, as a floor broker will be registered as such unless he has been granted trading privileges by a board of trade which has been designated as a contract market by the Commission.

* * * * *

2. Section 3.12 is proposed to be amended as follows:

§ 3.12 Registration of associated persons.

* * * * *

(c) * * *

(1) * * *

(ii) The futures commission merchant has verified the information supplied by the applicant in response to the questions on Form 8–R which relate to the applicant's education and employment history during the preceding five years, except that this paragraph (c)(1)(ii) does not apply to any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1981, is associated with the certifying futures commission merchant of its agent;

(iii) To the best of the futures commission merchant's knowledge, information, and belief, all of the publicly available information supplied by the applicant on Form 8–R is accurate and complete: *Provided,* That it is unlawful for the futures commission merchant to make the certification required by this paragraph (c)(1)(iii) if the futures commission merchant knew or should have known that any of that information is not accurate and complete; and

(iv) The futures commission merchant has taken, and will take, such measures as are necessary to prevent the unwarranted dissemination of any of the information contained in that Form 8–R, or in the records and documents obtained in support of the certifications required by this section.

* * * * *

(d) * * *

(3) Within sixty days of mailing the certifications permitted by paragraph (d)(1) of this section, the associated person and the futures commission merchant must complete and the futures commission merchant must file with the Commission a Form 8–R in accordance with the instructions thereto. The Form 8–R must contain the certifications required by paragraphs (c)(1)(ii)–(iv) of this section and must be accompanied by the fingerprints of the applicant on a fingerprint card provided by the Commission for the purpose except that a fingerprint card does not have to be submitted for any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1981, is associated with the certifying futures commission merchant or its agent as an associated person.

* * * * *

3. Section 3.30 is proposed to be added and, as added, would read as follows:

§ 3.30 Current address for purpose of service to be filed with the Commission.

The address of each registrant, applicant for registration and principal, as submitted on the application for registration (Form 7–R or Form 8–R) or as submitted on the biographical supplement (Form 8–R) shall be deemed to be the address for delivery to the registrant, applicant or principal of any communications from the Commission, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose. Each registrant, while registered, and each principal, while affiliated with a registrant, must keep current the address on the application for registration, biographical supplement, or other address filed with the Commission for the purpose of receiving communications from the Commission. An order of default or other appropriate relief may be entered in any proceeding, including a reparation proceeding commenced while the registrant is registered or within two years thereafter, for failure to file a required response to any communication sent to the latest address filed with the Commission.

4. Section 3.31 is proposed to be amended as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

* * * * *

(c) * * *

(2) Each person registered as, or applying for registration as, a futures commission merchant, commodity trading advisor or commodity pool operator must, within ten days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the Commission.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

5. Section 145.5 is proposed to be amended as follows:

§ 145.5 Nonpublic matters.

* * * * *

(f) * * *

(2) Files concerning persons subject to regulation by the Commission, including files with respect to applications for registration as a futures commission merchant, commodity pool operator or commodity trading advisor and biographical supplements submitted with such applications, and applications for registration as a floor broker or associated person. Examples of the information on the applications or biographical supplements which may be protected are an individual's home address and telephone number, social security number, date and place of birth, fingerprints and the information concerning prior arrests, indictments, criminal convictions or other judgments or sanctions imposed by state or federal courts or regulatory authorities;

* * * * *

6. Section 145.6 is proposed to be amended as follows:

§ 145.6 Commission offices to contact for assistance; registration records available at Chicago regional office.

* * * * *

(b) The Chicago regional office of the Commission will have available for public inspection and copying the publicly available portions of applications for registration as a futures commission merchant, commodity trading advisor or commodity pool operator (Form 7–R), applications for registration as an associated person or floor broker (Form 8–R), Certificates of Special Registration (Form 8–S), and

Footnotes continued from last page
(testimony of Edwin Kuh, Jr.) (floor broker must be a member of an exchange).

Notices of Termination (Form 8–T). The Form 8–R also serves as a biographical supplement for principals of those persons filing the Form 7–R. Unless disclosure is required under the Freedom of Information Act, the fingerprint card, any supplementary attachments filed in response to items 3–7, 10, 14–19 and 21–24 on Form 8–R, and any supplementary attachments filed in response to item 2 on Form 8–S or items 2–5 on Form 8–T generally will not be available for public inspection and copying. When such fingerprint cards and supplementary attachments are on file or when a Form is subject to a petition for confidential treatment filed under § 145.9, the FOI, Privacy and Sunshine Acts compliance staff will decide any request for access in accordance with the procedures set forth in §§ 145.7 and 145.9.

PART 147—OPEN COMMISSION MEETINGS

7. Section 147.3 is proposed to be amended as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *

(6) * * *

(ii) Files concerning individuals subject to regulation by the Commission, including files with respect to applications for registration as a futures commission merchant, commodity pool operator or commodity trading advisor and biographical supplements submitted with such applications, and applications for registration as a floor broker or associated person. Examples of the information on the applications or biographical supplements which may be protected are an individual's home address and telephone number, social security number, date and place of birth, fingerprints and the information concerning prior arrests, indictments, criminal convictions or other judgments or sanctions imposed by state or federal courts or regulatory authorities; and

* * * * *

Issued in Washington, D.C. on October 30, 1980 by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

Registration Booklet

Commodity Futures Trading Commission—1975

This Booklet Includes:

Application for Registration and Biographical Supplement (Form 8–R)

Certificate of Special Registration (Form 8–S)

Notice of Termination (Form 8–T)

Please be advised that:

An incomplete Form will be rejected.

Fees are not refundable.

Eight to ten weeks are required to process an application for initial registration.

Willful falsification, misrepresentation, or omission of any material fact required to be stated on this form constitutes cause for the denial, suspension, or revocation of registration and prosecution under criminal statutes.

CFTC Form 8–R, 8–S, 8–T

Privacy Act Notice

The information in Forms 8–R, 8–S, 8–T and on the fingerprint card is being collected pursuant to authority granted in Sections 4f, 4k, 4n and 8a of the Commodity Exchange Act (7 U.S.C. 6f, 6k, 6n, 12a).

The information requested in Form 8–R and on the fingerprint card will be used by the Commodity Futures Trading Commission as a basis for initiating an inquiry into the individual's fitness to be an associated person or floor broker or to be a principal of a futures commission merchant, commodity trading advisor or commodity pool operator. The information requested in Form 8–S will be used by the Commission to establish the registration of certain associated persons. The information requested in Form 8–T will be used by the Commission to record the registration status of the individual and, in appropriate cases, as a basis for a further inquiry into the individual's fitness to remain in business subject to the Commission's jurisdiction.

With the exception of the social security number, all information requested in Forms 8–R, 8–S and 8–T must be furnished before the Forms will be processed. The furnishing of a social security number, however, assists the Commission in identifying individuals and therefore expedites the processing of those Forms.

Failure by an applicant, registrant, or principal to timely file or cause to be filed a properly completed Form 8–R, 8–S, or 8–T or a fingerprint card may result in the lapse, denial, suspension or revocation of registration or other enforcement action by the Commission.

With the exception of the fingerprint card and any supplementary information contained in attachments to items 3–7, 10, 14–19, and 21–24 on Form 8–R or in attachments to item 2 on Form 8–S or items 2–5 on Form 8–T, these Forms are considered by the Commission to be public records and will be available for inspection by any person. Copies will be maintained at the Commission's Central Regional Office at Sears Tower, 46th Floor, 233 S. Wacker Drive, Chicago, Illinois 60606. Further, the Commission may disclose the fingerprint card and any such supplementary information to third parties pursuant to routine uses which the Commission has published in the Federal Register or as otherwise authorized under the Privacy Act, 5 U.S.C. 552a, and the Commodity Exchange Act. A summary of the types of disclosure which the Commission may make is as follows: (1) in connection with administrative proceedings or matters in litigation; (2) in connection with Commission investigations; (3) where the information is furnished to regulatory, self-regulatory and law enforcement or other government agencies to assist them in meeting responsibilities assigned to them by law; (4) where disclosure is required under the Freedom of Information Act (5 U.S.C. 552); (5) in connection with an employer's hiring or retention of an employee; (6) in connection with the verification of information submitted for sponsorship purposes; (7) in other circumstances in which the withholding of such information appears unwarranted; and (8) in connection with legally required or authorized reports.

If an individual believes that the placing in the Commission's public files of any of the information contained in Forms 8–R, 8–S, 8–T or on the fingerprint card would constitute an unwarranted invasion of his personal privacy or would reveal sensitive business information, the individual may petition the Commission, pursuant to 17 CFR 145.9, to treat such information as non-public in response to requests under the Freedom of Information Act.

This notice is provided in accordance with the requirements of the Privacy Act, 5 U.S.C. 552a(e)(3), and summarizes some of an individual's rights under the Privacy Act, 5 U.S.C. 552a, and the Freedom of Information Act, 5 U.S.C. 552. Individuals desiring further information should consult the Commission's regulations under the Privacy Act, 17 CFR Part 146, and under the Freedom of Information Act, 17 CFR Part 145, and the Commission's annual notice, pursuant to the Privacy Act, of the existence and character of each system of records maintained by the Commission.

General Instructions

The following general instructions are intended to provide an overview of the Commission's registration application requirements. Specific instructions for completing the Form 8–R follow these general instructions. In addition, certain items within the form contain instructions to assist in their completion.

Who Must File Form 8–R

Associated Persons
Floor Brokers
Principals

Definitions

(1) *Associated Persons*

An "associated person" is any natural person who is associated with a futures commission merchant or with an agent of a futures commission merchant as a partner, officer or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (1) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (2) the supervision of any person or persons so engaged.

(2) *Floor Brokers*

A "floor broker" is any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases or sells for any other person any commodity for future delivery on or subject to the rules of any contract market. An

applicant for registration as a floor broker (or for renewal thereof) must be a person who has been granted floor trading privileges by a commodity exchange which has been designated by the Commission as a contract market.

(3) *Principals*

A "principal" is, with respect to an applicant for registration, a registrant or a person required to be registered under the Commodity Exchange Act or regulations thereunder: (1) any person, including, but not limited to a sole proprietor, general partner, officer, director, branch office manager or designated supervisor, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of that person which are subject to regulation by the Commission; (2) any holder of more than ten percent of the outstanding shares of any class of stock; or (3) any person who has contributed more than ten percent of the capital.

When Form 8–R and Fingerprints Must Be Filed

If you have already filed a Form 8–R or a Form 94 with the Commission, you may not have to file a fingerprint card with this application. In addition, certain principals may not be required to file a Form 8–R or a fingerprint card. You should carefully read the instructions below to determine whether you must file.

In instances when the filing of a fingerprint card is required, the Commission may accept instead a photocopy of a fingerprint card if the processing of that fingerprint card was completed by the Federal Bureau of Investigation within the last ninety days. A photocopy of the arrest record report, if any, must be attached. Photocopies must be validated on the reverse side with the signature of an officer of the corporation, if the registered firm is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. Floor broker applicants utilizing this alternative must sign for themselves.

(1) *Associated Persons*

To be registered, you must be associated with a futures commission merchant or its agent.

The duration of an associated person registration will be until: (1) the cessation of the association of the registrant with the futures commission merchant or its agent; or (2) the revocation, suspension, lapse, or withdrawal of the registration of the futures commission merchant with which the registrant is associated. If you are registered as an associated person on July 1, 1981, you may continue to act as such until your current registration expires; you may use the special registration procedure described below to re-register as an associated person of your sponsoring futures commission merchant or its agent on or before the date your current registration expires.

Generally, a Form 8–R and a fingerprint card are required each time you apply for registration as an associated person; a fingerprint card does *not* have to be submitted the first time your registration expires after July 1, 1981 if you are going to re-register with the same futures commission merchant or its agent. The futures commission merchant must submit the Form 8–R (and a fingerprint card, if one is required) to the Commission for you. If you later change firms, you must re-register as an associated person and have the new futures commission merchant submit a Form 8–R and a fingerprint card for you.

In certain instances, associated persons who are already registered will be eligible to use a special registration procedure when they move from one firm to another. The special registration procedure and eligibility requirements are as follows:

Any associated person whose registration has been *granted* within the preceding twelve months or has *terminated* within the preceding sixty days will be registered as an associated person of a registered futures commission merchant or its agent upon the mailing to the Commission of Form 8–S by that futures commission merchant. The futures commission merchant must certify that the associated person has been hired or is otherwise employed by the futures commission merchant or its agent. The associated person must certify that he is eligible for special registration and that his registration as an associated person is not suspended or revoked. (In addition, if there is a registration proceeding pending against the associated person at the time of certification or if he has withdrawn an application for registration with the Commission within the preceding twelve months, the associated person must give the sponsoring FCM a copy of the complaint or withdrawal letter that was issued by the Commission.) The certifying futures commission merchant then has sixty days within which to complete the prescribed screening of the individual and submit an updated and complete Form 8–R and a fingerprint card.

(2) *Floor Brokers*

A Form 8–R is required each time an individual applies for registration as a floor broker. A fingerprint card is required from an individual the first time he applies for registration as a floor broker, except where (1) the individual has previously filed a fingerprint card with the Commission in accordance with the registration requirements for becoming a principal or an associated person or (2) the individual had a current Form 8–R or Form 94 on file with the Commission on July 1, 1981.

All floor broker registrations expire on December 31 of each year. An individual applying for renewal of registration as a floor broker is required to file a Form 8–R but may answer "No Change" to any question which asks for information that has previously been furnished to the Commission by the registrant on a Form 8–R or supplement thereto if such information remains accurate and unchanged. If the information provided has not changed but additional information is needed as an update, you may insert the words "Information Since Previous Filing" and then give the new information.

(3) *Principals*

A Form 8–R is required for each principal of a futures commission merchant, commodity trading advisor or commodity pool operator unless that individual has a current Form 8–R or Form 94 on file with the Commission. A fingerprint card is required from an individual the first time he becomes a principal, except where (1) the individual has previously filed a fingerprint card with the Commission in accordance with the registration requirements for becoming a floor broker or an associated person or (2) the individual had a current Form 8–R or Form 94 on file with the Commission on July 1, 1981.

If an individual becomes a principal of a firm after having previously submitted a Form 8–R or Form 94, notification on Form 3–R from the firm of which the individual is a principal is required.

Registration Fee

Each application for registration as an associated person and each application for registration, or for renewal thereof, as a floor broker must be accompanied by a fee of $20. The fee must be remitted by money order, bank draft or check, payable to the "Commodity Futures Trading Commission." No fee is required if Form 8–R is being filed solely for a principal as a biographical supplement to Form 7–R.

Where To File

Send completed Forms 8–R, 8–S and 8–T (copies will be accepted only with an original signature and date), registration fee and fingerprint card, if applicable, to: Commodity Futures Trading Commission, 233 South Wacker Drive, Suite 4600, Chicago, Illinois 60606.

When To File Sponsor's Certification

A Form 8–R which is submitted to the Commission by a sponsoring futures commission merchant as an application for registration of an associated person may be sent to the Commission by that sponsoring futures commission merchant prior to the completion of the firm's screening of the applicant. The "Sponsor's Certification" may be sent separately and after the remainder of Form 8–R, the fingerprint card and accompanying fee have been sent to the Commission. No application for registration as an associated person will be considered complete until the "Sponsor's Certification" has been received by the Commission.

If the individual has used Form 8–S to register under the special procedures available to certain associated persons, the futures commission merchant must include the "Sponsor's Certification" with the updated and complete Form 8–R, fingerprint card and fee, all of which must be received by the Commission within sixty days after Form 8–S is mailed.

If an Application Is Pending

Because of the nature of the responsibilities assumed by a person in a registered capacity, the Commission must conduct an extensive investigation of the fitness and qualifications of each person who files an Application for Registration or Biographical Supplement (Form 8–R). *Generally, eight to ten weeks are required to process a properly completed application for initial registration.* Further investigation, review or processing of the application may extend the processing

period. If an application is incomplete or otherwise improperly submitted, its processing will be delayed. If you have an inquiry or question about a pending application and you are filing as an associated person or principal, you should contact the registration department of the firm with which you are going to be affiliated.

How To Report Changes and Corrections

Each applicant or registrant as an associated person or floor broker and all individuals who have filed Form 8–R as a biographical supplement to Form 7–R must keep the answers provided on Form 8–R current and accurate. After the filing of a Form 8–R, a change of answer to items 1, 2, 6, 14 through 19, and 7 (for associated persons only) and 8 (for floor brokers only) must be reported on Form 3–R.

How To Report Terminations And Failures To Become Associated

A futures commission merchant must file a properly completed Notice of Termination (Form 8–T) with the Commission within ten days after the occurrence of either of the following: (1) the failure of an individual after the filing of a Form 8–R on his or her behalf to become associated with the futures commission merchant or its agent; or (2) the termination of the association of an individual with the futures commission merchant or its agent.

A futures commission merchant, commodity trading advisor or commodity pool operator must file a properly completed Notice of Termination (Form 8–T) with the Commission within ten days after the termination of the affiliation of a principal with the firm.

Notice of termination as described above may be given on a Uniform Termination Notice for Securities Industry Representative and/or Agent (Form U–5) in lieu of a Form 8–T.

Effect of Acceptance of Forms

Acceptance of any of these Forms does not constitute a finding that it is accurate, current or complete or that it has otherwise been filed as required.

Specific Instructions

Responses to questions on Forms 8–R, 8–S and 8–T must be typewritten or printed in black ink. All questions should be answered completely and accurately to eliminate delay and assist in prompt handling. If you are not required to answer a particular question, enter "Not Applicable." If additional space is needed, use an attachment and refer to the corresponding item number on the Form.

The following instructions to certain questions on Form 8–R are provided for your assistance in answering them completely and accurately. Questions not specifically explained in this set of instructions are either self-explanatory or explained on Form 8-R.

Personal History

Item 8. If Form 8–R is being used to file for more than one registration category, you may have more than one firm name and main business address to enter in Item 8. Use an attachment and refer to Item 8.

Employment

Item 11. Give complete details about any self-employment, including the name under which you did business. Give the required information for all employers even if you had more that one employer at any one time.

Education

Item 12. Give the required information for all post-high school education. If there was no post-high school education, give the required information for the last school attended.

Trading Privileges

Item 13. Include all exchange memberships (provided you have been granted floor trading privileges on the exchange you list). In addition, include all exchanges of which you are not a member, but upon which you are permitted to trade in one or more contract(s). If the grant of trading privileges is pending at the time of filing Form 8–R and is later granted, documentation must be filed with the Commission together with a change of answer report on Form 3–R.

Disciplinary History

Item 14 to Item 19. Carefully follow the instructions and notices in this section of Form 8–R. Note that copies of legal documents may be required.

Sponsor's Certification

This section of Form 8–R must be completed by the certifying futures commission merchant whenever Form 8–R is being filed for registration of an associated person.

Give the name(s) of previous employer(s) and dates of employment (and educational institution(s) attended and dates of attendance, if applicable) of the individual on whose behalf Form 8–R is being filed. Identify the person contacted and method used to verify the above information.

Carefully read the remaining portion of this section of Form 8–R and make the appropriate entries.

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

(Check where applicable)

Application for Registration as:

[] Associated Person ($20 fee enclosed)

[] Floor Broker ($20 fee enclosed) for the year ending December 31, 19__

FOR OFFICE USE ONLY

Biographical Supplement to application for registration as a:

[] Futures Commission Merchant (no fee required)

[] Commodity Trading Advisor (no fee required)

[] Commodity Pool Operator (no fee required)

TYPE OR PRINT LEGIBLY IN BLACK INK

PERSONAL HISTORY

1. Full Name (last, first, middle)

2. Have you ever been known by any other names (including a maiden name)? [] YES [] NO If yes, give name(s).

3. Date of Birth* (day/mo./yr.)	4. Place of Birth (City and State)*	5. Social Security No.* (Voluntary submission to aid in processing)	6. Daytime Telephone No.* (Area Code and Number)

7. Present Home Address (Number, Street, City, State and Zip Code)* (A Post Office Box Number is not acceptable.)

8. Associated Persons: Name of Futures Commission Merchant and Main Business Address (Number, Street, City, State and Zip Code)
Principals: Firm Name and Main Business Address
Floor Brokers: Main Business Address only

9. Associated Persons and Principals: Branch Office Address or Agent's Name and Branch Office Address (Number, Street, City, State and Zip Code)

RESIDENTIAL HISTORY

10. Present and Prior Residences for past 10 years starting with CURRENT residence and working back. (Attach additional sheet if necessary.)

DATE (MO./YR.) FROM	TO	ADDRESS (Number, Street, City, State and Zip Code) (A Post Office Box Number is not acceptable.)
	Present	

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*You do not have to answer questions 3, 4, 5, 6, 7, and 10 on this Form. You may instead answer them on a supplementary sheet and submit it as an attachment to this Form.

Type or Print Legibly in Black Ink

EMPLOYMENT

Present and Prior Employment for past 10 years starting with CURRENT position and working back. (All time must be accounted for including self-employment, part-time employment, unemployment and military service. Attach additional sheet if necessary.)

DATE (MO. YR.) FROM	DATE (MO. YR.) TO	NAME OF EMPLOYER AND ADDRESS WHERE EMPLOYED (Number, Street, City, State and Zip Code)	KIND OF BUSINESS	POSITION HELD	REASON FOR LEAVING
	Present				

EDUCATION

12. List educational institutions attended.

DATE (MO. YR.) FROM	DATE (MO. YR.) TO	NAME OF EMPLOYER AND ADDRESS WHERE EMPLOYED (Number, Street, City, State and Zip Code)	MAJOR FIELD OF STUDY	DEGREE (IF ANY)

EXCHANGE MEMBERS

13. Floor Broker applicants and registrants only. List all U.S. commodity exchanges on which you have been granted trading privileges. (If pending, so indicate.)

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BILLING CODE 6351-01-C

Type or Print Legibly in Black Ink

Disciplinary History

Provide on attached sheets complete details, including dates, of any matter to which a "Yes" response is given in items 14 through 19. Also attach documents containing the judgments, decisions, verdicts or other findings made and sanctions or sentences imposed. If documents are not attached, an explanation stating why documents are not obtainable must be furnished.

No details or documents need be furnished if the details have been reported in writing to this Commission or to the Commodity Exchange Authority on a previous application or supplemental statement or if the details are already on file as a result of an action by the Commission or Commodity Exchange Authority or a reparations proceeding. You must, however, give the name of the action or proceeding next to your "Yes" response and indicate the year of the action or proceeding.

14. ARE YOU CURRENTLY, OR HAVE YOU BEEN IN THE PAST TEN YEARS, subject to an expulsion, bar, fine or civil monetary penalty, censure, denial, suspension or revocation of membership or registration, cease and desist order, temporary or permanent injunction, denial of trading privileges or other sanction or disciplinary action through an adverse determination, voluntary settlement or otherwise in an action or proceeding brought by or before:

(i) The Commodity Futures Trading Commission, the Secretary of Agriculture (including the Commodity Exchange Authority), the Securities and Exchange Commission or the attorney general, securities commission or a similar regulatory authority of any State, territory, the District of Columbia or foreign country?

Yes ☐ No ☐

(ii) Any commodity or securities exchange, clearing organization, contract market, association registered with the Commission under Section 17 of the Commodity Exchange Act, or the National Association of Securities Dealers, Inc.?

Yes ☐ No ☐

(iii) Any federal or state court, regulatory authority or governmental body (not mentioned above), or professional association in any of the following fields: accounting, banking, commodities, finance, insurance, law, real estate, or securities?

Yes ☐ No ☐

15. HAVE YOU EVER been convicted, or been found guilty of, or pleaded guilty or *nolo contendere* to, a felony or misdemeanor? (Omit traffic violations for which you were fined $300 or less.)

Yes ☐ No ☐

Note: Include every such offense regardless of whether: the record was expunged, set aside or sealed; there was a post-conviction dismissal; a state certificate of relief from disabilities or similar document was issued which relieves the holder of forfeitures, disabilities or bars that result from a conviction; or a pardon was granted. (You may, however, exclude offenses in which the charge was adjudicated in a juvenile court or under a youth offender law).

16. IN THE PAST TEN YEARS, has a complaint, counterclaim or cross complaint been filed against you in any civil proceeding or Commodity Futures Trading Commission reparation proceeding involving misrepresentation, fraud, deceit, theft, conversion, abuse of a fiduciary relationship, or the misuse of funds or property of others which resulted in a recommended, initial, or final decision or judgment against you with respect to such charge?

Yes ☐ No ☐

17. HAVE YOU EVER (not limited to the past ten years) been debarred by any agency of the United States or by any state from contracting with the United States or from contracting with that state?

Yes ☐ No ☐

18. WITHIN THE PAST TEN YEARS has any firm, corporation or other organization with which you were associated at the time as a sole proprietor, partner, officer, director, holder of more than 10% of the outstanding shares of any class of voting stock, or other controlling person: made a compromise with creditors, filed or been declared bankrupt under any bankruptcy code or act, or been in federal or state receivership?

Yes ☐ No ☐

19. Are you a party to any action, or is there any charge pending against you, or have you been informed of any action or charge, the resolution of which could result in a "Yes" answer to any of the above questions (items 14–18)?

Yes ☐ No ☐

Type or Print Legibly in Black Ink

Certification

The following should be read very carefully and signed by the applicant, registrant or principal.

I understand that I am subject to the imposition of criminal penalties under Section 9(b) of the Commodity Exchange Act and 18 U.S.C. 1001 for any false statements or omissions made in this application. I further certify that I will at all times keep the answers to the information called for herein accurate and current by filing a written notice of any change with the Commission's Registration Unit, 233 South Wacker Drive, Suite 4600, Chicago, Illinois 60606.

I certify that my answers and statements in this Form 8–R are true and that in the light of the circumstances under which I have given them, my answers and statements in this Form 8–R are not misleading in any material respect.

I understand that my address as submitted on Form 8–R will be deemed to be the address for delivery to me of any communications from the Commission, including any summons, complaint, reparation claim, order, subpoena, request for information, or any other written communication, unless I specify another address for this purpose. I further understand that I must keep current the address on Form 8–R.

I understand that I am not registered and may not act as an associated person or floor broker until approval and official notification have been rendered, unless registration as an associated person has already been granted in accordance with the special registration provisions set forth by regulations under the Commodity Exchange Act or unless this Form 8–R has been timely filed as an application for renewal of registration as a floor broker.

Signature _____

Date _____

Willful falsification, misrepresentation, or omission of any material fact required to be stated on this Form constitutes cause for the denial, suspension, or revocation of registration and prosecution under criminal statutes.

COMMODITY FUTURES TRADING COMMISSION

SPONSOR'S CERTIFICATION

TO BE COMPLETED BY FUTURES COMMISSION MERCHANT FOR ASSOCIATED PERSON REGISTRATION ONLY

20. Applicant's Full Name (last, first, middle)

21. Date of Birth* (day/mo./yr.)	22. Place of Birth* (City and State)	23. Social Security No.* (Voluntary submission to aid in processing)	24. Daytime Telephone No.* (Area Code and Number)

*Responses to questions 21, 22, 23 or 24 may be submitted on a supplementary sheet.

VERIFICATION OF EMPLOYMENT AND EDUCATION

EMPLOYER OR EDUCATIONAL INSTITUTION	EMPLOYED OR ATTENDED FROM/TO (Past 5 Years Only)	NAME AND POSITION OF PERSON CONTACTED	CONTACTED BY LETTER, PHONE

I hereby certify that the information supplied by the applicant in response to questions contained in Form 8-R which relate to the applicant's employment and educational history for the past five years have been verified. Specifically, this firm has communicated with the applicant's previous employer(s) of the past five years and the colleges or universities attended by the applicant within the past five years (if any), as set forth above. In addition, I have made or caused to be made additional inquiries and investigations into the applicant's background to determine that this application is accurate and complete to the best of my knowledge, information and belief. Unless registration has already been granted in accordance with the special registration provisions, it is the intention of the futures commission merchant or its agent to hire or otherwise employ the applicant as an associated person and that such applicant will be hired within thirty days after receipt of notification from the Commodity Futures Trading Commission that the applicant is fit for registration as an associated person, and that further, the applicant will not be permitted to act as an associated person until registered as such pursuant to this application.

I understand that the information contained in the Form 8-R has been supplied to this firm for the sole purpose of allowing it to verify the publicly available information contained in the Form 8-R in connection with the registration of the person named herein as an associated person. I further represent that I have taken, and will take, such measures as are necessary to prevent the unwarranted dissemination of any of the information contained in the Form 8-R and the records and documents retained in support of the Form 8-R.

Print Name and Title

Signature

Print Name of Firm

Date

(Must be signed by an officer of the corporation, if the registered futures commission merchant is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. Indicate which.)

WILLFUL FALSIFICATION, MISREPRESENTATION, OR OMISSION OF ANY MATERIAL FACT REQUIRED TO BE STATED ON THIS FORM CONSTITUTES CAUSE FOR THE DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION AND PROSECUTION UNDER CRIMINAL STATUTES OF THE INDIVIDUAL AND FIRM MAKING THE ABOVE CERTIFICATION.

CFTC Form 8-R
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COMMODITY FUTURES TRADING COMMISSION

CERTIFICATE OF SPECIAL REGISTRATION
FOR CERTAIN ASSOCIATED PERSONS

1. Individual's Name _____ _____ _____
Last First Middle

2. Social Security Number: _____
(Voluntary submission to aid in processing)

3. Firm Name and Main Address (Number, Street, City, State and Zip Code)

_____

_____

_____

4. Branch Office Address or Agent's Name and Business Address (Number, Street, City, State and Zip Code)

_____

_____

_____

5. Basis of eligibility for Special Registration - Check applicable box(es)

a. ☐ Prior registration as an associated person has terminated within the preceding sixty days.

b. ☐ Prior registration as an associated person was granted within the preceding twelve months.

c. ☐ Prior registration as an associated person was granted before July 1, 1981 and has not yet expired.

6. CFTC proceedings - Check applicable box

Is there a proceeding pending to deny, suspend or revoke your registration in any capacity with the Commodity Futures Trading Commission or has the Commodity Futures Trading Commission within the past twelve months given you a notice under section 1.10e or section 3.20 of its regulations and thereafter permitted you to withdraw an application for registration?

a. ☐ No.

b. ☐ Yes. If yes, the futures commission merchant listed above has been given a copy of the complaint or letter issued by the Commodity Futures Trading Commission.

APPLICANT'S CERTIFICATION

I hereby certify that my registration as an associated person in not suspended or revoked and that my answers and statements in this Form 8-S are accurate and complete.

_____ _____
Signature Date

SPONSOR'S CERTIFICATION

Effective Date: _____
Date Form 8-S is mailed

I hereby certify that the above individual has been hired or otherwise employed by the futures commission merchant of which I am an officer, general partner or sole proprietor or by its agent. I further certify that if that individual has answered "Yes" to Question 6, the futures commission merchant has received a copy of the complaint or letter issued by the Commodity Futures Trading Commission.

_____ _____ _____
Type or Print Name and Title of Appropriate Signatory | Signature of Appropriate Signatory | Date

(Appropriate signatory must be either an officer of the corporation, if the registered futures commission merchant is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. Indicate which.)

Person to contact for further information: _____
Telephone Number: _____

WILLFUL FALSIFICATION, MISREPRESENTATION, OR OMISSION OF ANY MATERIAL FACT REQUIRED TO BE STATED ON THIS FORM CONSTITUTES CAUSE FOR THE DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION AND PROSECUTION UNDER CRIMINAL STATUTES.

CFTC Form 8-S

COMMODITY FUTURES TRADING COMMISSION

NOTICE OF TERMINATION

TO BE COMPLETED BY FUTURES COMMISSION MERCHANT, COMMODITY TRADING ADVISOR, OR COMMODITY POOL OPERATOR FOR ASSOCIATED PERSON OR PRINCIPAL

1. Full Name (last, first, middle)

2. Date of Birth* (day/mo./yr.)	3. Place of Birth* (City and State)	4. Social Security No.* (Voluntary submission to aid in processing)	5. Daytime Telephone No.* (Area Code and Number)

*Responses to questions 2, 3, 4, or 5 may be submitted on a supplementary sheet.

6. Firm Name and Main Address (Number, Street, City, State and Zip Code)

7. Branch Office Address or Agent's Name and Business Address (Number, Street, City, State and Zip Code)

8. Date of Termination: _____

9. Reason for Termination - (Check One)

☐ Voluntary ☐ Deceased ☐ Permitted to Resign* ☐ Discharged* ☐ Other*

10. While employed by or associated or affiliated with your firm or its agent, was the individual the subject of:

(a) any investigation or proceeding conducted by any governmental agency or self-regulatory body which has jurisdiction over the commodities, insurance, real estate or securities industry? Yes ☐* No ☐

(b) a refusal of registration, censure, suspension, expulsion, fine or any disciplinary action by any governmental agency or self-regulatory body, having jurisdiction over the commodities, insurance, real estate or securities industry? Yes ☐* No ☐

(c) any major complaint or any legal proceeding by a customer? Yes ☐* No ☐

(d) any conviction of a felony or misdemeanor (other than traffic violations)? Yes ☐* No ☐

11. Is there reason to believe that the individual, while employed by or associated or affiliated with your firm or its agent, may have violated any provision of any commodities or securities law or regulation or any agreement with or rule of any governmental agency or self-regulatory body, or engaged in conduct which may be inconsistent with just and equitable principles of trade under the rules or regulations of any governmental agency or self-regulatory body? Yes ☐* No ☐

*FURNISH FULL DETAILS ON SUPPLEMENTARY SHEET

Signature _____ Type or Print Name and Title _____ Date _____

(Must be signed by an officer of the corporation, if the registrant is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. Indicate which.)

Person to contact for further information: _____ Telephone Number: _____

WILLFUL FALSIFICATION, MISREPRESENTATION, OR OMISSION OF ANY MATERIAL FACT REQUIRED TO BE STATED ON THIS FORM CONSTITUTES CAUSE FOR THE DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION AND PROSECUTION UNDER CRIMINAL STATUTES OF THE INDIVIDUAL AND FIRM MAKING THE ABOVE CERTIFICATION.

CFTC Form 8-T
1-81

BILLING CODE 6351-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM81-2]

Proposed Rulemaking Regarding Eligibility, Rates and Exemptions for Qualifying and Utility-Owned Geothermal Small Power Production Facilities; Correction

Issued: November 26, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a proposed rule on the implementation of section 643 of the Energy Security Act concerning geothermal energy that appeared at page 74934 in the **Federal Register** of Thursday, November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Adam Wenner, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8033 or Glenn Berger, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, (202) 357-8033.

The following correction is made in FR Doc. 35391:

On page 74939, after the third line in the first full paragraph, the following language is inserted: acquisition and ownership of "qualifying" facilities or UGC's. By excluding a UGC from the definition of "electric utility company" under section 2(a)(3) of PUHCA, the FERC's proposed rules would eliminate the SEC's jurisdiction under section 9(a)(2) of PUHCA, thus rendering moot the exemption available under the SEC's proposed Rules 14 and 15, as it would pertain to geothermal facilities of 80 megawatts capacity or less.[31]

Environmemtal Considerations

The Commission issued in June 1980, a draft environmental impact statement (DEIS) on rulemakings implementing sections 201 and 210 of PURPA. In the DEIS the Commission determined that PURPA-induced development of geothermal small power production facilities would not create significant environmental effects. In compliance with the National Environmental Policy Act of 1969 (NEPA), the Commission is examining the environmental effects associated with these rules.

Written Comments

Interested persons are invited to submit written comments on the proposed regulation to the Office of the Secretary.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-37744 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-85-M

[31] This approach is similar to the exemption from PUHCA contained in section 9 of the Pacific Northwest Electric Power Planning and Conservation Act (S. 885), which would exempt a "generating company" from the definition of an electric utility company in PUHCA. the SEC has indicated its support, in principle, for that exemption.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 80N-0238]

Wart Remover Drug Products for Over-the-Counter Human Use; Establishment of a Monograph

Correction

In FR Doc. 80-30789 appearing on page 65609 in the issue of Friday, October 3, 1980, make the following corrections:

1. On page 65609, center column, under "For Further Information Contact", the phone number now reading "301-443-4860" should have read "301-443-4960".

2. In the same column, three lines from the bottom of the page, ". . . § 330.10(a)92), . . ." should have read ". . . § 330.10(a)(2), . . .".

3. On pages 65612 and 65613, where ever "salicyclic acid" appears, it should be corrected to read "salicylic acid".

3. In the first column of page 65614, in the fifth line of the second complete paragraph, the formula "($C_2H_4O_6$)" should have read "($C_2H_4O_2$)"

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR-68-80]

Front-End Tertiary Oil Under the Crude Oil Windfall Profit Tax Act of 1980

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of front-end tertiary oil under the Crude Oil Windfall Profit Tax Act of 1980. The regulations would provide necessary guidance to the public for compliance with the law.

DATES: Written comments and requests to speak at the public hearing must be delivered or mailed by February 3, 1981. The amendments are proposed to be effective for domestic crude oil removed after February 29, 1980, and before October 1, 1981.

ADDRESS: Send comments and requests to speak at the public hearing to: Commissioner of Internal Revenue. Attention: CC:LR:T (LR-68-80), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Douglas W. Charnas of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the proposed Excise Tax Regulations (26 CFR Part 51) under section 4994(c) of the Internal Revenue Code of 1954 which was added by section 101 of the Crude Oil Windfall Profit Tax Act of 1980 (94 Stat. 230). The proposed Excise Tax Regulations being amended were published in the **Federal Register** for April 4, 1980 (45 FR 23384). the amendments thereto (referred to hereafter as the proposed regulations) are to be issued under the authority contained in sections 4997(b) and 7805 of the Internal Revenue Code of 1954 (94 Stat. 250 and 68A Stat. 917; 26 U.S.C. 4997(b) and 7805).

In General

Under a Department of Energy rule adopted in August 1979, producers who invest in enhanced oil recovery projects were allowed to deregulate, beginning January 1, 1980, the price of specified volumes of price-controlled oil to finance those projects. This oil is also

called "front-end" oil. Under section 4994(c) of the Code, oil that DOE deregulates as front-end oil is generally exempt from the windfall profit tax if the project to be financed (referred to as a "front-end tertiary project") is on property controlled by producers who were independent producers for the fourth quarter of 1979. In cases where a tertiary project is on a property which is controlled by persons other than eligible independent producers, a tax refund is available for windfall profit tax paid on the front-end oil to the extent that certain qualified expenditures exceed the amount actually recouped under the DOE front-end financing program.

Exemption for Tertiary Projects of Independents

The proposed regulations explain the exemption from the windfall profit tax for domestic crude oil which is removed from the premises before October 1, 1981, and which is treated as front-end oil and used to finance a front-end tertiary project on one or more properties each of which is a qualified property. Front-end oil is defined as domestic crude oil that is not subject to a first-sale ceiling price under the energy regulations and that is sold for fair market value. The inclusion of the fair market value requirement in the definition eliminates the possibility that a producer could avoid paying windfall profit tax by voluntarily selling oil at the ceiling price. A qualified property is any property that is an "independent producer property", is derived from an "independent producer property", or is a combination of more than one "independent producer property". An "independent producer property" means any property if, on January 1, 1980, 50 percent or more of the aggregate of all operating mineral interests with respect to that property were held by persons who were independent producers for the entire last quarter of 1979.

Refunds for Tertiary Projects of Integrated Producers

The proposed regulations explain that in the case of any front-end tertiary project on a property that is not a qualified property, the front-end oil used to finance the project on such a property is subject to the windfall profit tax. However, the excess of allowed expenses of the taxpayer with respect to the project over the tertiary incentive revenue attributable to the taxpayer's interest in that project is treated as a payment of windfall profit tax made on September 30, 1981, and a refund can be claimed in the amount that the payment exceeds the producer's liability. The total amount of the payment deemed made by the producer cannot exceed the aggregate windfall profit tax imposed with respect to front-end oil of that producer removed after February 1980 and before October 1981.

Definitions and Special Rules

The proposed regulations define "allowed expenses" to mean 75 percent of environmental, engineering, laboratory, and certain other expenses. Such expenses must have been incurred and paid after August 21, 1979, and must be attributable to the period before October 1, 1981. The expenditures must reflect the fair market value of services and property received and reported pursuant to the energy regulations. Fuel or tertiary injectants are attributable to periods before October 1, 1981, if used or injected before that date. Expenditures paid or incurred before October 1, 1981, for items having a useful life after that date are properly allocable to periods before that date only to the extent that any income tax deductions of the taxpayer for the item are properly allocable to periods before October 1, 1981.

The proposed regulations provide that the term tertiary incentive revenue has the meaning given the term by the front-end tertiary provisions of the energy regulations, as amended to coordinate with the windfall profit tax (see Docket No. ERA–R–77–1C in the **Federal Register** for June 13, 1980, 45 FR 40106 (1980) amending 10 CFR 212.78 (1979)).

The proposed regulations provide that the term "front-end tertiary project" means any project for the recovery of crude oil, to the extent that such project involves the application of an enhanced oil recovery technique, provided that, with respect to that project, a producer has complied with the requirements of § 212.78 (d)(1) or (e)(1) of the energy regulations. The proposed regulations also provide that front-end oil is attributable first to projects to which the exemption from the windfall profit tax applies.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held in accordance with the notice of hearing published in this issue of the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is John B. Bromell, of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

The burdens that would be imposed by the proposed regulations flow directly from the statute. The approach chosen in the proposed regulations is consistent with accepted income tax principles and, to the extent relevant, with current DOE regulations. Evaluation of the effectiveness of these regulations after issuance will be based upon comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, and the public.

Proposed Amendments to the Regulations

A new § 51.4994–2 is added to proposed 26 CFR Part 51 immediately after § 51.4994–1. This new section reads as follows:

§ 51.4994–2 Front-end oil.

(a) *Exemption of front-end oil for tertiary projects of independent producers.* For purposes of chapter 45 of the Code and this part, the term "exempt front-end oil" means any domestic crude oil which is removed from the premises before October 1, 1981, and which is released from price controls to finance a tertiary project on one or more properties each of which is a qualified property. For a definition of "qualified property" see paragraph (c) (4) of this section. For a definition of "independent producer", see section 4992 (b). Front-end oil is any domestic crude oil (1) which is not subject to a first sale ceiling price under the energy regulations (as defined in § 150.4996–1 (f)) solely by reason of the fact that the tertiary incentive revenue (as defined in paragraph (c)(2) of this section) from such sale does not exceed the allowed expenses (as defined in paragraph (c) (1) of this section) that are attributable to that producer, and (2) which is sold for fair market value. Front-end oil may be from property unrelated to the qualified property. See example (1) of paragraph (d) of this section.

(b) *Refunds for tertiary projects controlled by integrated producers*—(1) *In general.* In the case of any front-end tertiary project which does not meet the requirements of paragraph (a) of this section, the excess of (i) The allowed expenses (as defined in paragraph (c)(1) of this section) attributable to the producer with respect to that project, over

(ii) The tertiary incentive revenue (as defined in paragraph (c)(2) of this section) attributable to the producer's interest in that project,

shall be treated as a payment by the taxpayer with respect to the tax imposed by chapter 45 of the Code made on September 30, 1981. For those cases in which the producer is required to make estimated windfall profit tax payments, payments during the period ending September 30, 1981, are not affected by the payment deemed made on September 30, 1981, under this section. If this deemed payment exceeds the amount of tax owed under chapter 45 of the Code for the period ending September 30, 1981, then the taxpayer may claim a refund of the excess payment. Alternatively, the taxpayer may claim the excess payment as a credit against the first tax that accrues under chapter 45 of the Code for subsequent periods. See example (3) in paragraph (d) of this section. For purposes of this paragraph, if a taxpayer has more than one project not meeting the requirements of paragraph (a) of this section, tertiary incentive revenue is attributed, after applying the ordering rule of paragraph (c)(6) of this section, to such projects in proportion to allowed expenses for the projects. For example, assume A has 3 projects (M, N and O) not meeting the requirements of paragraph (a) of this section, and allowed expenses attributable to A from the projects are $50x, $100x and $150x, respectively. If A has $12x in tertiary incentive revenue, then tertiary incentive revenue is attributed to A's projects as follows: $20x to M, $40x to N, and $60x to O.

(2) *Limitation based on amount of tax.* The total amount of payments determined under subparagraph (1) of this paragraph with respect to any producer shall not exceed the aggregate tax imposed by section 4986 with respect to front-end oil of that producer removed after February 1980 and before October 1981.

(c) *Definitions and special rules.* For purposes of section 4994 (c) and this section (including the application of the tertiary provisions for purposes of this section)—

(1) *Allowed expenses.* (i) Except as provided in subdivision (ii) of this subparagraph, the term "allowed expenses" means 75 percent of environmental expenses, engineering and laboratory expenses, and expenses listed either in the appendix to § 212.78 of the energy regulations or in an order issued pursuant to § 212.78 (e)(2) or (3) of the energy regulations. Such "allowed expenses" must be incurred for fair market value and must have been paid and reported pursuant to § 212.78 (h) of the energy regulations.

(ii) The term "allowed expenses" shall not include any amount incurred and paid before August 22, 1979, or attributable to a period after September 30, 1981. No more than the lesser of $1 million or 25 percent of the total amount of allowed expenses with respect to a particular project may be based on engineering and laboratory expenses. The allowed expenses of a particular project shall be attributable to the qualified producers with respect to that project. Where there is more than one qualified producer, the qualified producers shall allocate these expenses among themselves in the same proportion that allowed expenses are allocated under the energy regulations. With respect to any particular property, the total amount of allowed expenses may not exceed $20 million.

(iii) For purposes of subdivision (ii) of this subparagraph—

(A) Any injectant and any fuel shall be treated as attributable to periods before October 1, 1981, if the injectant is injected, or the fuel is used, before October 1, 1981, and

(B) Any other item shall be treated as attributable to periods before October 1, 1981, only to the extent that under chapter 1 of the Code deductions for the item (including depreciation with respect to the item) are properly allocable to periods before October 1, 1981.

For purposes of paragraph (c)(1)(iii)(B) of this section, expenditures paid or incurred by a taxpayer before October 1, 1981, for items used on or after that date are properly allocable to periods before that date only if they meet the requirements of paragraph (c)(1)(i) of this section, and only to the extent that any income tax deductions (including depreciation) for the items are properly allowable to that taxpayer for periods before October 1, 1981. For example, a disbursement made before October 1, 1981, in the ordinary course of business and for a service which reasonably could be expected to be performed prior to that date is an allowed expense. For purposes of this paragraph, a reasonable expectation of performance before October 1, 1981, exists (and an act shall be treated as performed before that date), if it appears from all of the facts and circumstances that the act would have been performed before such date but for an act of God, a strike, a severe mechanical breakdown, an injunction, or a restraining order. Expenses paid for items which ordinarily would not be taken into account prior to October 1, 1981, are not allowed expenses. See example (4) in paragraph (d) of this section.

(2) *Tertiary incentive revenue.* The term "tertiary incentive revenue" has the meaning given that term by the front-end tertiary provisions of the energy regulations (see § 212.78 (c), as amended to coordinate with chapter 45 of the Code).

(3) *Front-end tertiary provisions.* The term "front-end tertiary provisions" means the provisions of § 212.78 of the energy regulations which exempt crude oil from ceiling price limitations to provide financing for tertiary projects (as such provisions took effect on October 1, 1979). The term also includes any modification of such provisions, but only to the extent that such modification is for purposes of coordinating such provisions with the tax imposed by chapter 45 of the Code.

(4) *Qualified property.* The term "qualified property" means any property that—

(i) Is an "independent producer property", or

(ii) Is derived from an "independent producer property" (as in the case where a portion of an "independent producer property" becomes a new separate property), or

(iii) Is a combination of more than one "independent producer property" (or parts thereof).

The term "independent producer property" means any property if, on January 1, 1980, 50 percent or more of the aggregate of all operating mineral interests (as defined in section 614(d)) with respect to that property was held by persons who were independent producers (within the meaning of section 4992(b)) for the entire last quarter of 1979. The 50 percent or more determination is made only with respect to rights in crude oil and without regard to any short-term arrangements relating to the working or operating rights that provide for the allocation of production to compensate a producer for bearing more than a pro rata share of the costs of development or production (such as a carried interest). Ownership of the front-end tertiary oil itself is irrelevant for this purpose. See example (5) of paragraph (d) of this section.

(5) *Front-end tertiary project.* The term "front-end tertiary project" means any project for the recovery of crude oil, to the extent that such project involves the application of an enhanced oil recovery technique, provided that, with respect to that project, a producer has complied with the requirements of § 212.78(d)(1) or (e)(1) of the energy regulations, whichever is applicable.

(6) *Ordering rule.* Front-end oil of any taxpayer shall be treated as attributable first to projects which meet the requirements of paragraph (a) of this section.

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

Example (1). A, an independent producer as defined in section 4992 (b) of the Code, owns 60 percent of the aggregate operating mineral interests in a property with a front-end tertiary project in State X and is attributed $12 million of allowed expenses from that project. B, an integrated oil company as defined in § 150.4996–1 (g), owns the other 40 percent of the aggregate operating mineral interests in the property with the front-end tertiary project in State X and is attributed $8 million of allowed expenses from such project. A owns one-third of the aggregate operating mineral interests of a property in State Y which is producing tier 1 oil. A's portion of the oil on this property can be released to market price until A receives $12 million of tertiary incentive revenue. This oil is exempt from the tax imposed by chapter 45 of the code. B owns the entire operating mineral interest of a property in State Z which is producing tier 1 oil. B can release oil on this property to market price until $8 million of tertiary incentive revenue is received and this oil is exempt from the tax imposed by chapter 45 of the Code.

Example (2). Assume the same facts as in example (1) except that A owns 40 percent of the aggregate operating mineral interests in the property with the front-end tertiary project in State X and B owns the other 60 percent of the interests, and that A and B, for purposes of the energy regulations, are each to be attributed $10 million of allowed expenses (as defined in paragraph (c)(1) of this section) from that project. A's portion of the oil on the property in State Y can be released to market price until A receives $10 million of tertiary incentive revenue; however, the oil is subject to the tax imposed by chapter 45 of the Code. B can release oil on the property in State Z to market price until B receives $10 million of tertiary incentive revenue; however, the oil is subject to the tax imposed by chapter 45 of the Code. If A or B receives less than $10 million in tertiary incentive revenue, the difference is treated as a payment with respect to the tax imposed by chapter 45 of the Code made on September 30, 1981, and a refund or credit of the deemed payment can be claimed in an amount not exceeding the limitation in paragraph (b)(2) of this section.

Example (3). C is attributed $15 million in allowed expenses from a front-end tertiary project on a qualified property and is attributed $5 million in allowed expenses from a front-end tertiary project which does not meet the requirements of paragraph (a) of this section. C owns an operating mineral interest in wells producing tier 1 oil. The tier 1 oil that is removed from the premises before October 1, 1981, and that is not subject to ceiling price limitations solely by reason of the front-end tertiary provisions of the energy regulations, produces $18 million in tertiary incentive revenue. The tier 1 oil sold to produce the first $15 million in tertiary incentive revenue is not subject to the tax imposed by chapter 45 of the Code because of the ordering rule in section 4994(c)(4)(E) and paragraph (c)(6) of this section. The tax imposed by chapter 45 of the Code does apply to subsequent sales of the tier 1 oil at market price. The tertiary incentive revenue attributable to the non-qualified property is only $3 million. Under section 4994(c)(2)(A) the $5 million in allowed expenses over the $3 million in tertiary incentive revenue, or $2 million, is deemed to be a payment of tax made on September 30, 1981. However, the $2 million deemed payment cannot exceed the aggregate tax imposed on front-end oil of the taxpayer after February 1980 and before October 1981. Assuming the $2 million does not exceed the limitation in the preceding sentence, C may file a claim after September 30, 1981, for a refund of the $2 million or may apply the $2 million as a credit against the first tax accruing after September 30, 1981.

Example (4). D owns the entire operating mineral interest in a property with an unconventional steam drive tertiary project. D has elected to expense intangible drilling costs and to use the double declining balance method of depreciation. D paid $39.2 million for four coal fired steam generators, the scrubbers for the generators and one solar powered steam generator. D paid $10 million for drilling 20 steam injection wells and 50 production wells. All equipment was put into use October 1, 1980, and all payments for the equipment were made during 1980. Also in 1980 D spent $250,000 for injectant additives, $600,000 for produced fluid treatment, and $4.4 million for coal. All these are allowed expenditures under the front-end tertiary provisions of the energy regulations. The useful life of the generators and scrubbers in 14 years. Under the double-declining balance method, the depreciation allocable to the period before October 1, 1981, on the generators and scrubbers is $5.6 million (($39.2 million÷14)×2). Thus, the allowed expenses with respect to these depreciable items is $4.2 million (75 percent of $5.6 million). The $10 million spent for drilling the production wells and steam injection wells is an allowed expense meeting the requirements of paragraph (c)(1)(i) of this section which is currently deducted. Accordingly, D has $7.5 million (75 percent of $10 million) in allowed expenses from the wells. Since all of the coal purchased was used before October 1, 1981, and 80 percent of the injectant additives purchased was used before this date, the allowed expenses for these items are $3.45 million (75 percent of $4.4 million plus 75 percent of (.80×$250,000)). The allowed expenses for produced fluid treatment are $450,000 (75 percent of $600,000). Thus D has $15.6 million ($4.2 million+$7.5 million+$3.45 million+$.45 million) in allowed expenses.

Example (5). A, an integrated oil company, owns the entire operating mineral interest in a property. On November 1, 1979, A enters an agreement with B, an independent producer. A assigns all its interest in the property to B, until B recoups 150 percent of his expenses for initiating a tertiary project on the property. Thereafter, A will pay 60 percent and B will pay 40 percent of the operating expenses and A will receive 60 percent and B will receive 40 percent of the oil and gas production from the tertiary project. To determine if the property is a "qualified property" under paragraph (c)(4) of this section, the short-term arrangement whereby B recoups 150 percent of his expenses for development of the tertiary project is disregarded. The permanent operating mineral interests of A and B are determined by any contracts in effect on January 1, 1980. Since A, an integrated oil company, has a 60 percent permanent interest on January 1, 1980, the property is not a "qualified property".

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80–37850 Filed 12–2–80; 4:29 pm]

BILLING CODE 4830–01–M

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26 CFR Part 51

[LR–68–80]

Front-End Tertiary Oil Under the Crude Oil Windfall Profit Tax Act of 1980; 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 exempt front-end oil under the Crude Oil Windfall Profit Tax Act of 1980.

DATES: The public hearing will be held on February 24, 1981, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by February 3, 1981.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–68–80), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202–566–3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 4994(c) of the Internal Revenue Code of 1954. The proposed regulations appear in the Proposed Rules section of this issue of the **Federal Register** (FR Doc. 80–37850).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have

submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by February 3, 1981. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appeaing 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. 80-37970 Filed 12-4-80; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Office of Labor-Management Standards Enforcement

29 CFR Part 452

Labor-Management Reporting and Disclosure Act of 1959; Election of Enforcement Provisions; Extension of Comment Period

AGENCY: Office of Labor-Management Standards Enforcement, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for comments on the proposed regulations published on October 3, 1980 (45 FR 65925) regarding the procedures for enforcing alleged violations of the union officer election provisions of the Labor-Management Reporting and Disclosure Act of 1959, as Amended. The comment period, which was to expire on December 2, 1980, is extended 15 days.

DATE: Comments must be received on or before December 17, 1980.

ADDRESS: Comments should be sent to the Assistant Secretary of Labor for Labor-Management Relations, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Herbert Raskin (202) 523-7373.

Signed at Washington, D.C., this 2nd day of December 1980.

William P. Hobgood,

Assistant Secretary of Labor for Labor-Management Relations.

[FR Doc. 80-37954 Filed 12-3-80; 12:53 pm]

BILLING CODE 4510-29-M

Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice of hearing for the purpose of obtaining information concerning employment of homeworkers.

SUMMARY: The Wage and Hour Division of the Department of Labor will be conducting hearings to determine if Regulations 29 CFR Part 530 are still appropriate to safeguard the minimum wage rate prescribed in the Act and whether there is a need to change the Regulations to more adequately reflect the current status of industrial homework.

DATES: Public hearings are to be held beginning at 9:30 a.m. on January 13, 1981 and beginning at 9:30 a.m. on February 17, 1981. Interested parties desiring to testify in person should so notify the Deputy Administrator in writing no later than December 31, 1980. Interested parties desiring to comment should submit their comments in writing to the Deputy Administrator on or before January 13, 1981.

ADDRESSES: The hearings will be held in the Raymond Contois Auditorium, City Hall, Church Street, Burlington, Vermont, on January 13, 1981 and in Conference Room N-5437 A-D, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C., on February 17, 1981. Parties desiring to testify or to submit comments should submit their requests or comments in writing to the Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: James L. Valin, Director, Division of Minimum Wage and Hour Standards, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-3508, Washington, D.C. 20210, (202) 523-7043.

SUPPLEMENTARY INFORMATION: Section 11(d) of the Fair Labor Standards Act provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Pursuant to this authority, the Secretary has issued regulations, published as Part 530 of Title 29 of the Code of Federal Regulations. Part 530 restricts the employment of industrial homeworkers in seven industries: women's apparel; jewelry manufacturing; knitted outerwear; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. These industries are defined in paragraphs (d) through (j) of Section 530.1. The restrictions provide that the production of goods in these industries cannot be carried on in or about a home, apartment, tenement, or room in a residential establishment except by a certificated homeworker. An employer may obtain a certificate for workers who are unable to adjust to factory work because of age or physical or mental disability or who are unable to leave home because their presence is required to care for an invalid there. In addition, the workers must have been engaged in industrial homework in the particular industry prior to a specified date, unless this requirement results in unusual hardship to an individual homeworker, in which case the requirement of previous employment in the industry may be waived. Individuals may also be employed as industrial homeworkers in the restricted industries under the supervision of a State vocational rehabilitation agency or a sheltered workshop without obtaining a certificate under Part 530.

The hearings are being held to obtain information on the current situation with respect to industrial homework and the extent to which it may have a bearing on the Secretary's statutory responsibility "to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed" in the Fair Labor Standards Act. Issues on which information is being sought include:

1. Whether unrestricted homework poses a significant threat to the minimum wage.

2. Whether all the industries currently restricted should remain under restriction.

3. Whether the list of restricted industries should be extended to include additional industries.

4. Whether the certificate requirements should be revised to recognize additional circumstances justifying certification, such as child care and other family demands that may tend to preclude factory employment.

5. Whether the certificate requirements should differentiate between urban and rural areas.

The comments should present factual information on these and other relevant issues. If, as a result of these hearings, it is determined that the present regulations should be amended, a specific proposal will be published in the **Federal Register.**

Copies of the Fair Labor Standards Act, Regulations Part 530 and the Homework Handbook may be obtained by contacting James L. Valin at the address in this notice.

Interested parties desiring to testify in person should notify the Deputy Administrator in writing, furnishing the following information:

(1) The name, address and telephone number of the person(s) appearing.

(2) If appearing in a representative capacity, the person(s) appearing should provide the name(s) and address(es) of the person(s) or organization(s) being represented.

(3) The location at which the person(s) desires to testify.

(4) The length of time requested for the presentation.

(5) Where written data or comments are to be provided for the record, they should be furnished in triplicate.

Interested parties who do not desire to testify in person but who wish to submit written data, proposals or other related material for the record should provide such, in triplicate, to the Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210, not later than January 13, 1981.

Persons who have not previously advised the Deputy Administrator that they wish to be heard will be heard following those who have so advised the Deputy Administrator, but they may be limited to ten minutes for their presentation.

This document was prepared under the direction and control of Herbert J. Cohen, Assistant Administrator, Office of Fair Labor Standards, Wage and Hour Division, U.S. Department of Labor.

Signed at Washington, D.C., November 28, 1980.

Henry T. White, Jr,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 80-37894 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL 1692-3]

State and Federal Administrative Orders Revising the Michigan State Implementation Plan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule: Proposed approval of revision.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) proposes to approve a revision to the Michigan State Implementation Plan (SIP). The revision is a Final Order issued by the Michigan Air Pollution Control Commission (Commission) to the Northern Michigan Electric Cooperative (Company). The Order extends from January 1, 1980, to January 1, 1985 the date by which the Company's Advance Steam Plant is required to comply with the sulfur dioxide emission limitations contained in the federally approved Michigan State Limitation Plan. The purpose of this notice is to invite public comment on USEPA's proposed approval of the Final Order dated December 10, 1979.

DATE: Written comments must be received by January 5, 1981.

ADDRESSES: Please send comments to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6029.

The State Order, supporting material and public comments received in response to this notice may be inspected and copied (for appropriate charges) during normal business hours at the above address or at: Michigan Department of Natural Resources, Air Quality Division, State Secondary Complex, General Office Building, 7150 Harris Drive, P.O. Box 30028, Lansing, Michigan 48909.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: The Northern Michigan Electric Cooperative (Company) Advance Steam Plant is located on the southern shore of Lake Charlevoix near Boyne City, Michigan. Charlevoix County, Michigan is located in Air Quality Control Region 126, which was designated attainment for sulfur dioxide (SO_2) on October 5, 1978 (43 FR 46010). The plant has three boilers: boilers 1 and 2 are each rated at 90,000 pounds of steam per hour and boiler 3 is rated at 250,000 pounds of steam per hour. Boilers 1 and 2 are controlled by a single electrostatic precipitator (ESP) and exhaust through a 45.7 meter stack. Boiler 3 is controlled by an ESP and exhausts through a second 45.7 meter stack. The ESP units together with mechanical collectors control particulate emissions and have a combined efficiency of 99.4 percent. The plant does not employ controls for SO_2 emissions.

Under Michigan Air Pollution Control Commission (Commission) Rule 336.49, approved as part of the Michigan SIP on May 31, 1972 and recodified as Rule 336.1401, the source is required to burn coal with a maximum sulfur content of 1.5 percent effective July 1, 1978. Under Consent Order No. 05-1977, the source was permitted to burn 2.0 percent sulfur coal until January 1, 1980, at which time the source was required to burn fuels with a maximum sulfur content of 1.5 percent, in compliance with Table 3 of Rule 336.49 (recodified as Rule 336.1401).

On January 10, 1980, the Commission entered into the record a Stipulation for Entry of Consent Order and Final Order APC No. 16-1979. Under Consent Order No. 16-1979, the source is allowed to continue burning 2.0 percent sulfur coal (maximum daily average) until January 1, 1985. The Company agrees to make regular reductions in the weekly average sulfur dioxide emissions from the source as follows:

Date and in Stack SO_2 Concentration (ppm)

January 1, 1980—1180
January 1, 1981—1122
January 1, 1982—1064
January 1, 1983—1006
January 1, 1984—948

After January 1, 1985 sulfur dioxide emission from the boilers must comply with the existing SIP limitations in Rule 336.49 (recodified as 336.1401), unless an order granting an additional extension of time to comply or setting a new emission limitation has been submitted to and approved by USEPA as a SIP revision. In addition, the Order requires that the Company provide ambient and in stack monitoring of SO_2, and perform sulfur analysis of the fuel to be burned. Data from the monitoring system and fuel analysis is required to be submitted to the Michigan Air Quality Division on a regular basis.

The Valley Model was employed in the analysis of SO_2 emissions from the Advance Steam Plant. This model was selected because the area in which the Advance Steam Plant is located is characterized as a rural complex terrain environment. The results of the modelling analysis demonstrate that the use of 2.0 percent sulfur coal at the Advance Steam Plant will not threaten attainment or maintenance of the SO_2 NAAQS in the vicinity of the source. Further, the modelling analysis demonstrates that the SO_2 Prevention of Significant Deterioration (PSD) increments will be protected during the variance. The revision is subject to the PSD regulations (45 FR 52676) since the company is located in an attainment area and the proposed SIP revision is a relaxation of the Michigan SIP.

The schedule for compliance is contained in the following paragraphs of the Order:

A. Sulfur Dioxide Emission Limitations

(1) Beginning on January 1, 1980, and continuing to January 1, 1985, fuel burned at the Advance Plant shall not:

(a) Result in sulfur dioxide emissions greater than 1,180 parts per million (by volume corrected to 50 percent excess air) averaged over a calendar day. This emission limitation is deemed equivalent to burning coal which averages on any calendar day 2.0 percent sulfur content by weight at 12,000 Btu per pound of coal.

(b) Result in sulfur dioxide emissions on a weekly average basis of: (i) 1,122 parts per million (by volume corrected to 50 percent excess air) for the period January 1, 1981, through December 31, 1981;

(ii) 1,064 parts per million (by volume corrected to 50 percent excess air) for the period January 1, 1982, through December 31, 1982;

(iii) 1,006 parts per million (by volume corrected to 50 percent excess air) for the period January 1, 1983, through December 31, 1983;

(iv) 948 parts per million (by volume corrected to 50 percent excess air) for the period January 1, 1984, through January 1, 1985.

(2) After January 1, 1985, emissions of sulfur dioxide from the Advance Plant shall not exceed 890 parts per million (by volume corrected to 50 percent excess air), unless an alternate date for compliance with that level or other levels is established by the Commission.

(3) Beginning on January 1, 1980, and continuing to January 1, 1985, if fuel burned at the Advance Plant is blended, such fuel shall be blended to provide substantially similar coal to each of the three individual coal bunkers such that sulfur dioxide emissions from all three units will correspond to that from Unit No. 3.

B. Sulfur Dioxide Control Program

(1) By January 1, 1983, the Company shall submit to the Commission an acceptable control strategy which shall provide for compliance with Section A(2) of this Order.

(2) If the Company elects to burn low sulfur coal as the method of control, the Company shall by January 1, 1984: (a) Notify the Commission that it has under control or contract option the low sulfur coal necessary to meet the requirements of Section A(2) of this Order; or

(b) Notify the Commission, with acceptable explanation, that adequate quantities of low sulfur coal are available for acquisition for use in the Advance Plant by January 1, 1985.

(3) If low sulfur coal is chosen as the method of control, the Company shall notify the Commission of the signing of any contracts for such coal within thirty (30) days of their signing.

(4) If the Company elects a control strategy other than low sulfur coal burning, a report on the method of control (including increments of progress) shall be provided to the Commission by January 1, 1983. If a control strategy other than low sulfur coal burning is submitted, it is the intent of the Company and the Commission to incorporate the elements of the control strategy into either a new or amended Order.

(5) January 1, 1983, and by January 1, 1984, the Company shall submit to the Commission a report of the Company's progress toward complying with the Order. Any developments which would preclude compliance with any provision of this Order shall be immediately reported in writing to the Commission.

C. Monitoring and Data Reporting

(1) The Company shall continue to operate and properly maintain the existing one (1) ambient sulfur dioxide monitor around the Advance Plant in such manner and at such location as reasonably specified by the Chief of the Air Quality Division of the Department of Natural Resources (hereinafter "Staff").

(2) The Company shall perform sulfur analysis of fuel purchased for burning at the Advance Plant in accordance with the procedures specified in Appendix A.

(3) The Company shall by January 1, 1980, install induct work prior to the breaching for the stack of Unit No. 3 (Stack No. 2) and place in operation and thereafter properly maintain a stack gas emission monitor for measuring sulfur dioxide that meets the performance specifications of Appendix B of 40 CFR Part 60 (1978).

(4) The Company shall demonstrate the adequacy of the stack gas sulfur dioxide monitor in accordance with the procedures specified in Appendix B of 40 CFR Part 60 (1978).

(5) For each calendar day during which the stack gas sulfur dioxide monitor has been inoperative for twelve (12) consecutive hours, the Company shall determine the daily sulfur dioxide emission rate from the Advance Plant according to the procedures specified in Appendix A of this Order. Such procedures shall be discontinued only after the stack gas sulfur dioxide monitor has operated acceptably for twelve (12) consecutive hours during a calendar day. If Staff finds the procedures referred to in this paragraph 5(C)(5) and set forth in Appendix A to be unacceptable, then the Company shall use other procedures as are acceptable to Staff.

(6) The Company shall report to the Staff sulfur dioxide emissions in terms of parts per million by volume corrected to 50 percent excess air.

(7) The Company shall submit to the Staff data from the aforementioned ambient air quality monitor, stack gas monitor, and fuel sulfur analysis in such format and at such intervals as reasonably specified.

(8) The monitoring and reporting requirements specified in or pursuant to subsections C (1) through (9) shall be, upon request of the Company, reviewed by the Commission and modified if the Commission finds such modifications are justified.

(9) Prior to July 1, 1981, and during each eighteen (18) month interval thereafter, the Company shall, upon sixty (60) days written notice from the Staff to the Company, conduct one particulate emission test. The tests shall be conducted in accordance with Commission approved procedures.

6. The Commission may modify or revoke this Order granting extension of the dates for compliance with Tables 3 and 4 if the Commission determines that: (a) The reasons that provided the basis for making the findings stated in Paragraph 4 of this Order no longer exist.

(b) The Company has not adequately complied with the terms, conditions, and requirements of this Order, including but not limited to monitoring, reporting, and fuel specifications.

(c) The public health, safety, or welfare may be adversely affected by a further compliance extension.

(d) Reductions in the sulfur dioxide emissions from the Advance Plant would allow location of a new source or

modification of an existing source and without the reduction the new source or modification of an existing source could not be permitted. However, such reductions shall not be greater than that necessary to permit the location of the new source of the modification to the existing source, and such reductions shall not be more stringent than the requirments of Tables 3 and 4 of R 336.49. (New Rule 336.1401).

(e) The original data submitted by the applicant on the application requesting an extension is materially inaccurate.

(f) Federal law or rules would prohibit or make unlawful further extension.

(g) The Company has demonstrated that a modification or revocation of the Order is justified. Agreement to and entry of this Order does not prejudice the right of the Company to petition the Commission for modification or revocation of the Order.

(h) The U.S. Environmental Protection Agency has disapproved this Order as a revision to the Michigan State Implementation Plan. If the Company has appealed that disapproval, the Commission shall consider the merits of that appeal in determining whether to take action under this subsection.

USEPA has reviewed the Order and concluded that the operation of the Advance Steam Plant under existing fuel conditions (2.0 percent sulfur coal) will not threaten or prevent the attainment and maintenance of the SO_2 NAAQS and PSD increments in the vicinity of the Advance Steam Plant. Therefore, USEPA proposes approval of the Order as a revision to the Michigan SIP. The State has indicated that it is relying on continuous emissions monitoring and fuel analysis to determine the Company's compliance with the Order. This is acceptable to USEPA.

All interested persons are invited to comment on this revision to the Michigan SIP and on USEPA's proposed action. Comments should be submitted to the address listed in the front of this notice. Public comments received on or before January 5, 1981, will be considered in USEPA's final rulemaking.

Under Executive Order 12044 (43 FR 12661), 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 proposed regulations as "specialized." I have reviewed these proposed regulations 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 they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

This proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

Dated: October 31, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-37780 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-10-FRL 1692-5]

State of Idaho Implementation Plan; Proposed Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This Notice is to invite public comment on EPA's proposal to approve a revision to the State of Idaho State Implementation Plan (SIP). This revision has been submitted to comply with EPA regulations contained in 40 CFR Part 58. The plan provides for the implementation of a statewide network for ambient air quality monitoring and data reporting. EPA has determined that the plan meets requirements for the monitoring, network design, instrument probe siting criteria, monitoring methods to be used, and establishing a quality assurance program.

DATE: Comments will be accepted up to January 5, 1981.

ADDRESSES: The related material in support of this revision may be examined during normal business hours at the following locations:

Central Docket Section, (10-A-80-18-), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Streets, S.W., Washington, D.C. 20460.

Air Programs Branch, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101

State of Idaho, Air Quality Bureau, Division of Environment, Fifth Floor, 450 West State, Boise, Idaho 83720

COMMENTS SHOULD BE ADDRESSED TO: Laurie M. Kral, Air Programs Branch, M/S 629, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 89101.

FOR FURTHER INFORMATION CONTACT: William B. Schmidt, Surveillance and Analysis Division, M/S 345, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-1106, FTS: 399-1106.

SUPPLEMENTARY INFORMATION: Section 319 of the Clean Air Act as amended, requires the Environmental Protection Agency (EPA) to establish monitoring criteria to be followed uniformly across the nation. Pursuant to this requirement and the recommendations of the Standing Air Monitoring Work Group (SAMWG), EPA, on May 10, 1979 (44 FR 27558) promulgated Rules and Regulations for Ambient Air Quality Monitoring, Data Reporting, and Surveillance Provisions. The regulations revoke Part 51 of Title 40 of the Code of Federal Regulations and establish a new Part 58 entitled Ambient Air Quality Surveillance.

40 CFR Part 58.20 requires that the State adopt and submit to the Administrator a revision to the plan which will:

(a) Provide for the establishment of an air quality surveillance system that consists of a network of monitoring stations designated as State and Local Air Monitoring Stations (SLAMS) which measure ambient concentrations of those pollutants for which standards have been established in 40 CFR Part 50.

(b) Provide for meeting the requirements of Appendices A, C, D, and E to this part.

(c) Provide for the operation of at least one SLAMS per pollutant during any stage of an air pollution episode as defined in the contingency plan.

(d) Provide for the review of the air quailty surveillance system on an annual basis to determine if the system meets the monitoring objectives defined in Appendix D to this part. Such review must identify needed modifications to the network such as termination or relocation of unnecessary stations or establishment of new stations which are necessary.

(e) Provide for having a SLAMS network description available for public inspection and submission to the Administrator upon request. The network description must be available at the time of plan revision submittal and must contain the following information for each SLAMS:

(1) The Storage and Retrieval of Aerometric Data (SAROAD) site identification form for existing stations.

(2) The proposed location for scheduled stations.

(3) The sampling and analysis method.

(4) The operating schedule.

(5) The monitoring objective and spatial scale of representativeness as defined in Appendix D to this part.

(6) A schedule for: (i) Locating, placing into operation, and making available the SAROAD site identification form for each SLAMS which is not located and

operating at the time of plan revision submittal;

(ii) Implementing quality assurance procedures of Appendix A to this part for each SLAMS for which such procedures are not implemented at the time of plan revision submittal; and

(iii) Resisting each SLAMS which does not meet the requirements of Appendix E to this part at the time of plan revision submittal.

Idaho's Air Quality Monitoring Network

On February 14, 1980, the State of Idaho's Department of Health and Welfare (IDHW) submitted to EPA a revision to its SIP which provides for the establishment of an air quality monitoring network. The submittal includes a description of the proposed network which will cover the criteria pollutants: Total suspended particulates (TSP), sulfur dioxide (SO_2) and carbon monoxide (CO) and ozone (O_3).

The Idaho monitoring SIP commits the State to the implementation of statewide SLAMS and National Air Monitoring Stations (NAMS) monitoring system to meet the requirements of 40 CFR Part 58, The system will be derived from the existing Idaho Air Monitoring Network with adjustments and additions made where necessary.

Besides establishing the SLAMS and NAMS (a subset of SLAMS), the SIP revision provides for the establishment of Special Purpose Monitoring Stations (SPMS). These monitors may be placed and used to fill special monitoring study needs. If data are to be used for support of control strategies, determination of attainment/non-attainment, or air dispersion modeling validation, the monitors will be reference or equivalent, sited according to Appendix E to 40 CFR Part 58 and follow the quality assurance procedures of Appendix A to 40 CFR Part 58.

The SIP states that specific SLAM sites will be designated as Episode Monitoring sites (EMS). These stations will be visited daily during the work week to ascertain proper operation and to detect elevated values. In the event an episode is declared, the pollutant(s) of concern will be followed continuously until episode termination.

All SLAMS in the Idaho monitoring system will be operated in accordance with the criteria given in Subpart B of 40 CFR Part 58. Each SLAMS monitor will meet the siting criteria given in 40 CFR Part 58, Appendix E. Methods used in the SLAMS will be referencee or equivalent as defined in 40 CFR Part 58, Appendix C. The quality assurance procedures of Appendix A to 40 CFR Part 58 will be followed when operating SLAMS and processing air quality data.

The air monitoring network will be reviewed, annually to eliminate any unnecessary SLAMS, add necessary SLAMS and to correct inadequacies. All proposed changes to the network will be reported to and discussed with the EPA Regional Office before changes are made.

Included as part of the SIP revision is a description of the proposed NAMS network. This description covers the existing proposed monitoring locations, sampling and analysis methods, monitoring objectives, and implementation dates.

EPA has reviewed the submittal and has determined that it meets the requirements of Sections 110 and 319 of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 58. EPA is therefore proposing approval of the revised Idaho Air Quality Monitoring Plan.

Interested persons are invited to comment on the revised Idaho SIP revision and on EPA's proposed actions. Comments should be submitted to the address listed in the front of this Notice. Public comments received on or before January 5, 1981, will be considered in EPA's final rulemaking. All comments received will be available for inspection at the EPA offices listed above.

EPA finds that good cause exists for providing a 30-day comment period for the following reasons: (1) The public has had adequate notice of the guidelines for preparation of Part 58 plans and (2) the impact of this rulemaking is limited only to the State of Idaho. Therefore, EPA is soliciting public comments for days on its proposed approval of the Part 58 revision for the State of Idaho to Title 40 of the Code of Federal Regulations.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Section 110 and 172 of the Clean Air Act (42 U.S.C. 7410(a) and 7502))

Dated: November 26, 1980.

Donald P. Dubois,

Regional Administrator.

Title 40, Part 52 of the Code of Federal Regulations is proposed amended as follows:

Subpart N—Idaho

In § 52.670, (c)(18) is added as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(18) On February 14, 1980 the State of Idaho Department of Health and Welfare submitted a plan revision to meet the requirements of Air Quality Monitoring 40 CFR Part 58, Subpart C, § 58.20.

[FR Doc. 80-37779 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-10-FRL 1692-6]

State of Oregon Implementation Plan; Proposed Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice is to invite public comment on EPA's proposal to approve a revision to the State of Oregon State Implementation Plan (SIP). This revision has been submitted to comply with EPA regulations contained in 40 CFR Part 58. The plan provides for the implementation of a statewide network for ambient air quality monitoring and data reporting. EPA has determined that the plan meets requirements for the monitoring network design, instrument probe siting criteria, monitioring methods to be used and establishing a quality assurance program.

DATE: Comments will be accepted up to January 5, 1981.

ADDRESSES: The related material in support of this revision may be examined during normal business hours at the following locations:

Central Docket Section, (10A-80-18), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Streets, S.W., Washington, D.C. 20460.

Air Programs Branch, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

Department of Environmental Quality, Yeon Building, 522 S.W. Fifth Avenue, Portland, Oregon 97204.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 629, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: William B. Schmidt, Chief, Air Surveillance & Investigation Section, M/S 345. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-1106, FTS: 399-1106.

SUPPLEMENTARY INFORMATION: Section 319 of the Clean Air Act as amended, requires the Environmental Protection Agency (EPA) to establish monitoring criteria to be followed uniformly across the nation. Pursuant to this requirement and the recommendations of the Standing Air Monitoring Work Group (SAMWG). EPA, on May 10, 1979 (44 FR 27558) promulgated Rules and Regulations for Ambient Air Quality Monitoring, Data Reporting, and Surveillance Provisions. The regulations revoke Part 51 of Title 40 of the Code of Federal Regulations and establish a new Part 58 entitled Ambient Air Quality Surveillance.

40 CFR Part 58.20 requires that the State adopt and submit to the Administrator a revision to the plan which will:

(a) Provide for the establishment of an air quality surveillance system that consists of a network of monitoring stations designated as State and Local Air Monitoring Stations (SLAMS) which measure ambient concentrations of those pollutants for which standards have been established in 40 CFR Part 50.

(b) Provide for meeting the requirements of Appendices A, C, D, and E to this part.

(c) Provide for the operation of at least one SLAMS per pollutant during any stage of an air pollution episode as defined in the contingency plan.

(d) Provide for the review of the air quality surveillance system on an annual basis to determine if the system meets the monitoring objectives defined in Appendix D to this part. Such review must identify needed modifications to the network such as termination or relocation of unnecessary stations or establishment of new stations which are necessary.

(e) Provide for having a SLAMS network description available for public inspection and submission to the Administrator upon request. The network description must be available at the time of plan revision submittal and must contain the following information for each SLAMS:

(1) The Storage and Retrieval of Aerometric Data (SAROAD) site identification form for existing stations.

(2) The proposed location for scheduled stations.

(3) The sampling and analysis method.

(4) The operating schedule.

(5) The monitoring objective and spatial scale of representativeness as defined in Appendix D to this part.

(6) A schedule for: (i) Locating, placing into operation, and making available the SAROAD site identification form for each SLAMS which is not located and operating at the time of plan revision submittal;

(ii) Implementing quality assurance procedures of Appendix A to this part for each SLAMS for which such procedures are not implemented at the time of plan revision submittal; and

(iii) Resiting each SLAMS which does not meet the requirements of Appendix E to this part at the time of plan revision submittal.

Oregon's Air Quality Monitoring Network

On December 27, 1979, the Oregon's Department of Environmental Quality (DEQ) submitted to EPA a revision to its SIP which provides for the establishment of an air quality monitoring network. The submittal includes a description of the proposed network which will cover the criteria pollutants: Total suspended particulates (TSP), sulfur dioxide (SO_2) and carbon monoxide (CO) and ozone (O_3).

The Orgeon monitoring SIP commits the State to the implementation of statewide SLAMS and National Air Monitoring Stations (NAMS) monitoring system to meet the requirements of 40 CFR Part 58. The system will be derived from the existing Oregon Air Monitoring Network with adjustments and additions made where necessary.

Besides establishing the SLAMS and NAMS (a subset of SLAMS), the SIP revision provides for the establishment of Special Purpose Monitoring Stations (SPMS). These monitors may be placed and used to fill special monitoring study needs. If data are to be used for support of control strategies, determination of attainment/nonattainment, or air dispersion modeling validation, the monitors will be reference or equivalent, sited according to Appendix E to 40 CFR Part 58 and follow the quality assurance procedures of Appendix A to 40 CFR Part 58.

The SIP states that specific SLAM sites will be designated as Episode Monitoring sites (EMS). These stations will be monitored on a real time basis to ascertain proper operation and to detect elevated values. In the event an episode is declared, the pollutant(s) of concern will be followed continuously until episode termination.

All SLAMS in the Oregon monitoring system will be operated in accordance with the criteria given in Subpart B of 40 CFR Part 58. Each SLAMS monitor will meet the siting criteria given in 40 CFR Part 58, Appendix E. Methods used in the SLAMS will be reference or equivalent as defined in 40 CFR Part 58, Appendix C. The quality assurance procedures of Appendix A to 40 CFR Part 58 will be followed when operating SLAMS stations and processing air quality data. The air monitoring network will be reviewed annually in early January to eliminate any unnecessary SLAMS, add necessary SLAMS, and stations or to correct inadequacies. All proposed changes to the network will be reported to and discussed with the EPA Regional Office before changes are made.

Included as part of the SIP revision is a description of the proposed NAMS network. This description covers the existing proposed monitoring locations, sampling and analysis methods, monitoring objectives, and implementation dates.

EPA has reviewed that submittal and has determined that it meets the requirements of Sections 110 and 319 of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 58. EPA is therefore proposing approval of the revised Oregon Air Quality Monitoring Plan.

Interested persons are invited to comment on the revised Oregon SIP revision and on EPA's proposed actions. Comments should be submitted to the address listed in the front of this Notice. Public comments received on or before January 5, 1981 will be considered in EPA's final rulemaking. All comments received will be available for inspection at the EPA offices listed above.

EPA finds that good cause exists for providing a 30-day comment period for the following reasons: (1) The public has had adequate notice of the guidelines for preparation of Part 58 plans and (2) the impact of this rulemaking is limited only to the State of Oregon. Therefore, EPA is soliciting public comments for 30 days on its proposed approval of the Part 58 revision for the State of Oregon to Title 40 of the Code of Federal Regulations.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA lables these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Section 110 and 172 of the Clean Air Act (42 U.S.C. 7410(a) and 7502))

Dated: November 26, 1980.

Donald P. Dubois,

Regional Administrator.

Title 40, Part 52 of the Code of Federal regulations is proposed amended as follows:

Subpart MM—Oregon

In § 52.1970, (c)(33) is added as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(33) On December 27, 1979, the State of Oregon Department of Environmental Quality submitted a plan revision to meet the requirements of Air Quality Monitoring 40 CFR Part 58, Subpart C § 52.20.

[FR Doc. 80-37778 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 266

[SWH-FRL 1690-2]

Hazardous Waste Management System; Availability of Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

SUMMARY: The Environmental Protection Agency is today making available to the public a draft document entitled "Used Oil Burned As A Fuel." The information in this document will be used to support the Agency's forthcoming regulations on used oil disposal and recycling pursuant to Sections 3004 and 3012 of the Resource Conservation and Recovery Act. EPA requests comments on this draft report.

DATE: Comments on the report are due no later than January 19, 1981.

ADDRESSES: Comments should be addressed to Deborah Villari, Docket Clerk (Docket No. 3004), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Communications should identify the regulatory docket or notice number, which is Section 3004.

Copies of the report are available for reading at the EPA Public Information Reference Unit [Room 2404] and the Subtitle C Docket Room [Room 2711], both located at 401 M Street SW., Washington, D.C., and at all EPA Regional Office libraries during the hours of 9:00 a.m. to 4:30 p.m., Monday through Friday.

Copies of the report may also be ordered from Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268, (513) 684-5362. (Please identify the document as SW-892.) EPA plans to provide the document free of charge to all who request copies. However, the Agency may charge $0.20 per page for photocopying if the available copies run out.

FOR FURTHER INFORMATION CONTACT: Arline M. Sheehan, Technology Branch, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), 401 M Street SW., Washington, D.C. 20460, (202) 755-9200.

SUPPLEMENTARY INFORMATION: On December 18, 1978 (43 FR 58946-59028) EPA proposed regulations implementing Sections 3001-3004 of the Solid Waste Disposal Act, as amended by RCRA. As a result of its review of public comments on these proposed regulations, EPA determined that further study was warranted on the potential hazards associated with burning used oil as a fuel. The draft document being noticed today was written to assess these hazards.

The purpose of making this document available to the public is to obtain comment on the accuracy of the data it contains, and not to reopen the comment period on either EPA's proposed Sections 3001-3004 regulations or EPA's final and interim final hazardous waste regulations issued on May 19, 1980 (45 FR 33063-33258). Commenters should limit the scope of their written submissions accordingly.

Steffen W. Plehn,

Deputy Assistant Administrator for Solid Waste.

[FR Doc. 80-37738 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-30-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 21474; RM-1968; RM-2810; RM-2978; BC Docket No. 80-253; RM-2898]

Broadcast Equal Employment Opportunity Rules; Applications for Renewal of License of Commercial and Non-Commercial AM, FM, and Television Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; extension of reply comment period and denial of suspension of reply comment dates and other relief.

SUMMARY: Action taken herein extends the time for filing reply comments in BC Docket No. 80-253, *Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM and Television Licensees.* Action is taken in repsonse to a request by Citizens Communications Center, which states that additional time is necessary in order to fully prepare a reply to the initial comments. Action taken herein also denies a request for suspension of the reply comment dates and other relief in Docket 21474, *Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395,* and BC Docket No. 80-253, filed by the National Association of Broadcasters ("NAB").

DATE: Reply comments in BC Docket No. 80-253 must be filed on or before December 8, 1980.

ADDRESS: Submit comments to Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steven A Bookshester, Broadcast Bureau, (202) 653-7586, or Israel Teitelbaum, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395. Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM and Television Licensees. Order extending time for filing reply comments in BC Docket No. 80-253 and denying suspension of reply comment dates and other relief in Docket 21474 and BC Docket No. 80-253.

Adopted: November 25, 1980.

Released: November 26, 1980.

By the Chief, Broadcast Bureau:

1. On June 4, 1980, the Commission adopted a *Second Further Notice of Proposed Rule Making* in Docket 21474, FCC 80-328, 45 FR 42729, published June 25, 1980. On the same date, the Commission also adopted a *Notice of Proposed Rule Making* in BC Docket 80-253, FCC 80-327, 45 FR 47444, published July 15, 1980.

2. The dates initially established for filing comments and reply comments in Docket 21474 were August 25, 1980, and September 25, 1980, respectively. By *Order,* 45 FR 56116, published August 22, 1980, the Commission granted the request of the National Association of Broadcasters ("NAB") and extended the filing dates for comments and reply comments to October 24, 1980, and November 24, 1980, respectively. By *Order* released October 23, 1980, BC-00759, the date for filing comments was further extended in response to an NAB request, to October 30, 1980. At that time, the Commission, on its own motion, also extended the reply comment date to December 1, 1980. In granting this additional time, the

Commission noted that further extensions were not contemplated.

3. The dates initially established for the filing of comments and reply comments in BC Docket No. 80–253 were October 1, 1980, and November 3, 1980, respectively. By *Order*, 45 FR 65637, published October 3, 1980, the Commission, in response to a request by the Committee for Community Access ("CCA"), extended the dates for filing comments and reply comments to November 3, 1980, and December 1, 1980, respectively.

4. Presently before the Commission is a motion filed by NAB on November 20, 1980, requesting that the Commission suspend the reply comment date in both proceedings. NAB asks that the Commission take this action in order that we may conduct the "initial regulatory flexibility analysis" described in section 603 of the Regulatory Flexibility Act, Pub. L. 96–354, 5 U.S.C. § 601 *et seq.* (September 19, 1980). Section 603 requires that an agency shall describe the impact of a proposed rule on small business entities, and consider alternatives or exemptions for such entities, and shall publish this analysis at the time of publication of the notice of proposed rule making. NAB also requests that the Commission issue *Further Notices* in both proceedings, in which the initial regulatory flexibility analyses would be included. NAB further requests that comments in these proceedings be gathered in accordance with such special procedures as the conduct of public hearings, suggested in section 609 of the Regulatory Flexibility Act.

5. As NAB itself notes, the Regulatory Flexibility Act is not effective until January 1, 1981. Additionally, the provisions of Section 603 apply only to rules for which a notice of proposed rule making is published on or after that date. Thus, it is clear that Congress did not intend this new legislation to receive the retroactive implementation proposed by NAB. Numerous proceedings are presently pending before the Commission which necessarily impact on smaller business entities. The Commission has been and will continue to be sensitive to the effect of the regulatory burdens imposed upon such entities. We are presently preparing for implementation of the Regulatory Flexibility Act on its effective date. We do not believe, however, that the public interest would be served by taking the premature action requested by NAB.[1]

[1] We note that the Regulatory Flexibility Act was signed into law on September 19, 1980, well in advance of the October 30, 1980, comment date in Docket 21474 and the November 3, 1980, comment date in BC Docket No. 80–253. The relationship, if any, of the Regulatory Flexibility Act to these proceedings might more properly have been raised by NAB in its initial filings. Should NAB have additional arguments it wishes to make regarding the impact upon smaller entities of the proceedings in question, it may, as appropriate, raise such matters in its reply comments.

6. Also before the Commission is a motion for extension of time in BC Docket No. 80–253 filed by Citizens Communications Center ("Citizens"). Citizens states that its limited resources are severely strained by the need to file reply comments in both BC Docket No. 80–253 and Docket 21474 on December 1, 1980, when it must also file a pleading in another, unrelated Commission proceeding. Citizens asks, therefore, that the Commission extend the date for filing reply comments in BC Docket No. 80–253 to and including December 8, 1980. In view of the factual situation presented to us by Citizens, we believe that the public interest would be served by this brief extension so that Citizens may fully participate in this proceeding. Further extensions in BC Docket No. 80–253 are not contemplated.

7. Accordingly, it is ordered, That the motion for suspension of the reply comment dates and other relief filed by the National Association of Broadcasters in Docket 21474 and BC Docket No. 80–253 is denied.

8. It is further ordered, That the motion of Citizens Communications Center in BC Docket No. 80–253 is granted and the date for filing reply comments in BC Docket No. 80–253 is hereby extended to and including December 8, 1980.

9. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

Federal Communications Commission.

Richard J. Shiben,

Chief, Broadcast Bureau.

[FR Doc. 80–37772 Filed 12–4–80; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 45, No. 236
Friday, December 5, 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

Food and Nutrition Service

Donated Foods to Nutrition Programs for the Elderly; Level of Assistance—Fiscal Year 1980

Correction

In FR Doc. 80-36326, on page 77095, in the issue of Friday, November 21, 1980, the middle column, the eight line down, correct "Title II" to read "Title III".

BILLING CODE 1505-01-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1981 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 1981 commodities to be produced by workshops for the blind and other severely handicapped.

Comments must be received on or before: January 7, 1981.

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 persons 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 1981, November 12, 1980 (45 FR 74836):

Class 7520

Perforator, Paper, Desk
7520-00-139-3942
7520-00-163-2563

C. W. Fletcher,
Executive Director.

[FR Doc. 80-37761 Filed 12-4-80; 8:45 am]

BILLING CODE 6820-33-M

CIVIL AERONAUTICS BOARD

[Docket No. 36435]

Aeroamerica, Inc.; Reassignment of Proceeding

This proceeding has been reassigned to Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated at Washington, D.C., December 1, 1980.

Joseph J. Saunders,
Chief Administrative Law Judge.

[FR Doc. 80-37848 Filed 12-4-80; 8:45 am]

BILLING CODE 6320-01-M

Former Large Irregular Air Service Investigation, Phase III; Applications of Imperial International Airlines; Advancement of Hearing Date

In the matter of Former Large Irregular Air Service Investigation, Phase III (Docket 33363) and applications of Imperial Enterprises Corporation, d/b/a Imperial International Airlines (Dockets 38666, 38667).

Notice is hereby given that the hearing in the above-titled proceeding now assigned to be held on December 11, 1980 (45 FR 74002, November 6, 1980) is advanced to December 10, 1980, at 10:00 a.m. (local time) in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C.

Dated at Washington, D.C., December 1, 1980.

William A. Kane, Jr.,
Administrative Law Judge.

[FR Doc. 80-37847 Filed 12-4-80; 8:45 am]

BILLING CODE 6320-01-M

[Order 80-11-130; Docket 38669]

Flying Tiger Line Inc. and Seaboard World Airlines, Inc.; Application for an Exemption (Pick-Up and Delivery Tariffs)

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 26th day of November 1980.

By application filed September 3, 1980, pursuant to § 416(b)(1) of the Federal Aviation Act of 1958, as amended, The Flying Tiger Line Inc. (FTL), and Seaboard World Airlines, Inc. (SBW), request an exemption from the requirement to file air cargo pick-up and delivery (PU & D) tariffs imposed by Section 403 of the Act and 14 CFR Part 222 of the Board's Economic Regulations. The carriers request that this exemption be effective immediately and continue until the Board issues its final rule in Notice of Proposed Rulemaking EDR-403, Docket 38329, 45 FR 42318, June 24, 1980. In support of their application, FTL and SBW state as follows:

(a) In EDR-403, the Board tentatively decided to eliminate the requirement that carriers file PU & D tariffs. Such tariffs have already been abolished for domestic cargo transportation by the Board's general exemption of domestic cargo carriers from tariff filing (ER-1080, November 8, 1978). The Board in EDR-403 tentatively found that the vestigial requirement that PU & D tariffs be filed for foreign air transportation served no regulatory purpose, since

> The purpose of establishing a pick-up and delivery zone was to define the area not subject to ICC jurisdiction as being "incidental to transportation by aircraft." The ICC has primary jurisdiction to define this exemption, and we believe that the extent of pick-up and delivery tariff filings is not sufficient to justify continued duplication of the ICC function (EDR-403 at 7).

(b) The carriers further state that the case for elimination of PU & D tariffs is even stronger than the Board's statement implies. The Motor Carrier Act of 1980 exempted from ICC jurisdiction transportation of property by motor vehicle which is part of a continuous movement, and which, prior or subsequent to that motor transportation, is moved by an air carrier. *See* 49 U.S.C. 10526(a)(8)(B). There is therefore no "ICC function" to duplicate. Congress has clearly

indicated that such motor transportation prior or subsequent to transportation by aircraft is to be completely deregulated, subject only to the considerations of reciprocity with foreign governments outlined in EDR-403.

(c) Since there is no public policy reason for retaining the PU & D tariff filing requirement, and substantial reasons (tentatively found by the Board to be compelling) for eliminating it, FTL and SBW submit that the basic statutory requirement for the grant of an exemption—that the exemption is consistent with the public interest—is met. Grant of this exemption would remove an outmoded regulatory requirement and carry out the Board's policy of relying upon the competitive marketplace to determine the extent and quality of air services. It would therefore clearly be in the public interest.

No responses to this application have been received.

In this case we find that the carriers have demonstrated that it will be consistent with the public interest to allow them to dispense with the requirement to file PU & D tariffs while we are considering our final rule in Docket 38329. Accordingly, we have decided to grant the requested exemption on behalf of all carriers. The exemption will continue until the conclusion of the proceeding in Docket 38329, or in Docket 36119 (EDR-384), 45 FR 41829, July 18, 1979, in which the continuation of pick-up and delivery tariffs is also being considered.

Accordingly,

1. The application for an exemption of the Flying Tiger Line Inc. and Seaboard World Airlines Inc. in Docket 38669 is granted, and we will extend it to all other U.S. and foreign air carriers, *Provided* that the carriers amend their pick-up and delivery tariffs to defer their effectiveness until a final order is issued by the Board in Docket 38329 or Docket 36119; and

2. This order shall be effective immediately, and will expire upon the issuance of a final rule in Docket 38329 or Docket 36119.

This order will be published in the **Federal Register**, and will be placed in Docket 38329 and the related Docket 36119.

By the Civil Aeronautics Board.[1]

Phyllis T. Kaylor,[1]

Secretary.

[FR Doc. 80-37846 Filed 12-4-80; 8:45 am]

BILLING CODE 6320-01-M

[1] All Members concurred.

[Docket No. 38758; Order 80-11-137]

Western Air Lines, Inc.; Proposed Increase in Prepaid Ticket Advice; Order Dismissing Complaint

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 26th day of November, 1980.

By tariff filed August 20, 1980, Western Air Lines, Inc. (Western) proposes to increase its present $5.00 charge to $10.00 for a Prepaid Ticket Advice (PTA), effective November 1, 1980.[1] In its filing, WA stated that the current charge is not sufficient to compensate for the transaction and the new charge more adquately reflects the level of remuneration required for the performance of this service. The rule in question applies between points in the U.S., as well as from points in the U.S. to points in Canada.

By complaint filed September 26, 1980,[2] Executive Travel System (ETS), a retail travel agent, protests Western's filing and requests that the Board suspend the proposed tariff revision, or in the alternative, that the Board permit Western to impose a $10.00 service charge for PTA's except in the case when a PTA is issued and payment is made pursuant to a Miscellaneous Charge Order issued to Western by a duly appointed travel agent. To explain the lateness of its filing, ETS states that they first received notice of the publication of this revision on September 11, 1980, when it was published in the magazine "Travel Weekly", Volume 39, No. 73 dated September 11, 1980. ETS acknowledges that, although they took immediate steps (enumerated in some detail in their pleading) to obtain the essential tariff and procedural information, they were unable to file their complaint until September 25, 1980, admittedly beyond the prescribed ten day period.[3] They state that they have however, diligently pursued the preparation and filing of their complaint, promptly after receiving actual notice of the said tariff revision, and that Western is not prejudiced by their late filing of the complaint as the proposed tariff revision was due to become effective November 1, 1980.

In support of its complaints, ETS states that: the proposed service charge of $10.00 is unjust and unreasonable because it discriminates against travel agents by imposing a lower price for air transportation to passengers purchasing tickets directly from Western at their airport counter rather than from travel agents; it will have the effect of coercing the general public to purchase tickets directly from Western at its airport ticket counters rather than from travel agents; it is prejudicial and harmful to members of the general public who are consumers of air travel in that the proposed charge for PTA's is excessive and bears no reasonable relationship to Western's cost in rendering the service; it will permit Western to reap a windfall profit at the expense of the general public in that the cost incurred by Western in issuing PTA's is negligible and has not increased so as to merit either the original service charge or the increase; and that it will have anticompetitive effects and will prevent travel agents from marketing services and selling air travel in competition with Western.

In answer to ETS's complaint, Western states that the complaint is late and should be dismissed, that the work involved in issuing a PTA is not negligible that the passenger requiring a PTA will purchase it just as readily from Western—at a fee—as from ETS, and that the marketplace should decide whether passengers will continue to use PTA's when they want to fly Western.

Upon consideration of the complaint, the answer, and other relevant matters, the Board will deny the complaint and permit the tariff to become effective. Our decision is based on several considerations. The current policy of the Congress, and the Board, as reflected in the Airline Deregulation Act, is to permit airlines considerable flexibility in pricing. This is reflected in the fact that the tariff rule placing charges on this service was initiated only a year ago (by Western and Eastern), and is now participated in by virtually all carriers. Prices have risen generally, and there is no basis for concluding that Western's proposed charges are out of line with its costs. Nor is there any evidence that Western is engaging in any abuse of market power. The provision of a premium service of this sort is a marketing tool, which the carrier may or may not choose to provide. Most important, ETS may opt to use the PTA service of several competing carriers, which remain at a lower rate.

Accordingly,

1. The complaint of Executive Travel System in Docket 38758 is dismissed;

2. This order will be served on Executive Travel System and Western Airlines, Inc.; and

[1] "PTA" denotes the service function of accepting payment for an airline ticket at one city for travel commencing at another city. Such prepaid ticket is physically made available to the customer at the boarding city, usually by means of an electronic tele-ticketing device. Rule 390, Tariff C.A.B. No. 352.

[2] With respect to the U.S.-domestic application of the proposed rule, complaints were due on September 2.

[3] ETS did not apply for permission to file a late filed document. We will, on our own motion, accept the complaint as late filed.

3. This order will be published in the Federal Register.

By the Civil Aeronautics Board:[4]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-37849 Filed 12-4-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Snow Grooming Vehicles, Parts Thereof and Accessories Therefor From the Federal Republic of Germany; Initiation of Antidumping Investigation

AGENCY: U.S. Department of Commerce.

ACTION: Initiation of antidumping investigation.

SUMMARY: The Department of Commerce advises the public that on the basis of a petition filed in proper from we are initiating an antidumping investigation to determine whether snow grooming vehicles, assembled or unassembled, and parts and accessories thereof from the Federal Republic of Germany are being, or are like to be, sold at less than fair value. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the manufacturer's or exporter's home market, or other countries, or less than the constructed value.

The Department of Commerce is notifying the International Trade Commission of this action so that, in accordance with the Tariff Act of 1930, as amended, and no later than December 22, 1980 the Commission may determine whether there is a reasonable indication of material injury because of imports of this merchandise.

EFFECTIVE DATE: December 5, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hudak, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230 (202-377-3174).

SUPPLEMENTARY INFORMATION: On November 6, 1980, the Department of Commerce ("Department") received a petition that complies with the requirements of §§ 353.36 and 353.37 of the Department Regulations (19 CFR 353.36 and 353.37). The petition was filed by the De Lorean Manufacturing Company, Logan, Utah, on behalf of the United States industry producing snow grooming vehicles. The petition alleges that snow grooming vehicles and accessories from the Federal Republic of Germany are being, or are likely to be, sold at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673)("the Act") and that the U.S. industry is likely to be materially injured by reason of imports of that merchandise.

The merchandise covered by this investigation is snow grooming vehicles, assembled or unassembled, provided for under item numbers 692.16 or 692.35, Tariff Schedules of the United States, and parts and accessories used chiefly on such vehicles, wherever provided for in the Tariff Schedules of the United States.

The petition includes sufficient evidence supporting both the allegations of sales at less than fair value on the basis of comparisons between prices in the home market and in the United States market, and of material injury, on the basis of actual or potential declines in output, sales, market share, profits, and employment in the United States industry.

In accordance with section 732(c) of the Act (19 U.S.C. 1673a(c)), I hereby decide that the Department will initiate an investigation to determine whether imports of snow grooming vehicles, assembled or unassembled, and parts and accessories thereof from the Federal Republic of Germany are being, or are likely to be, sold at less than fair value.

Pursuant to section 732(d) of the Act (19 U.S.C. 1673a(d)) the Department is notifying the U.S. International Trade Commission (ITC) and providing it with a copy of the information on which we based this determination to initiate an investigation. The International Trade Administration will make available to the ITC all nonprivileged and nonconfidential information. It will also make available all privileged and confidential information in its files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), the ITC will determine no later than December 22, 1980, whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of snow grooming vehicles, parts thereof and accessories therefor from the Federal Republic of Germany. If that determination is negative, this investigation will be deemed terminated, and the International Trade Administration will publish no further notice. Otherwise, the investigation will proceed to its conclusion.

Section 733(b) of the Act (19 U.S.C. 167 b(b)) requires that, normally no later than 160 days after date on which the petition was filed, the International Trade Administration make a preliminary determination whether there is a reasonable basis to believe or suspect that merchandise which is the subject of this investigation is being, or likely to be, sold at less than fair value. Therefore, unless the investigation is terminated or extended, the International Trade Administration will make a preliminary determination not later than April 27, 1981.

This notice is published pursuant to section 732 of the Act (19 U.S.C. 1673a) and section 353.37(b) of the Department Regulations, (19 CFR 353.37(b)).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

November 26, 1980.

[FR Doc. 80-37740 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

Jet Propulsion Laboratory; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this 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, NW., Washington, D.C. 20230.

Docket No.: 80-00266. Applicant: Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, California 91103. Article: Cooled Millimeter Wave-Length Microwave Spectrometer Receiver. Manufacturer: Millimeter Wellen Technik, West Germany. Intended use of article: The article is intended to be used for radio astronomical investigations of cosmic sources of molecular line emission to determine the physical conditions, such as temperature and density, in the gas flowing from stars in the late stages of their lives. A particular objective is the determination of the abundance of water vapor in the stellar ejecta. The experimental tecnique consists of measuring the output power from the receiver at various wavelengths when the telescope is

[4] All members concurred.

pointed at the star, and making a similar measurement in a direction away from the star. The difference in output is examined for excess emission attributable to the star itself.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a center frequency approximately equal to 180 gigahertz with an overall double sideband noise temperature of 830 degrees Kelvin. The National Bureau of Standards advises in its memorandum dated August 14, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-37811 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

National Aeronautics and Space Administration; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this 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.: 80-00073. Applicant: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, R&T Procurement Branch/BC7, Houston, Texas 77058. Article: Monohud Pilots' Display Unit, Video Signals Unit, Electronic Drive Unit, Electronics Unit and Accessories. Manufacturer: Marconi Avionics Elliott Bros., Ltd., United Kingdom. Intended use of article: The article is intended to be used in the study, in-flight development, and verification of Head-up Display (HUD) symbology formats and algorithms for Space Shuttle Orbiter approach and landing. Application received by Commissioner of Customs: December 12, 1980.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: This application is a resubmission of Docket Number 79-00218 which was denied without prejudice to resubmission on August 28, 1979 for informational deficiencies. The foreign article provides a large field of view (25 degree total circular field) in conjunction with its relatively small size. The National Bureau of Standards advises in its memorandum dated August 11, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-37812 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this 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. 80-00177. Applicant: National Oceanic and Atmospheric Administration, Climate & Garp Office, c/o Travel & Transportation Branch, AD17, 6010 Executive Blvd., Room 110, Rockville, Maryland 20852. Article: Navaid Sounding System. Manufacturer: Vaisala Oy, Finland Intended use of article: The article is intended to be used for investigations of pressure, temperature, humidity, wind speed and direction in order to provide international data set for a global weather model. Application received by Commissioner of Customs: February 4, 1980.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article will be used in a collaborative study involving distant institutions. Identical instruments and procedures will be used to avoid the possibility that subtle differences in technique might equivocate the comparability of results. The National Bureau of Standards advises in its memorandum dated June 25, 1980 that (1) the characteristic of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-37813 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

National Radio Astronomy Observatory; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this 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 NW., Washington, D.C. 20230.

Docket No. 80-00105. Applicant: National Radio Astronomy Observatory, Associated Universities, Inc., 2010 N. Forbes Blvd., Suite 100, Tucson, AZ 85705. Article: Replacement of Klystron, Model VRT 2124B6. Manufacturer: Varian Associates of Canada, Canada. Intended use of article: The article is intended to be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver which is used in conjunction with a microwave antenna to measure the intensity polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: December 26, 1979.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article operates in a frequency range of 140–170 gigahertz. The National Bureau of Standards advises in its memorandum dated September 23, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-37814 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

NYS Department of Health; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this 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. 80-00263. Applicant: NYS Department of Health, Division of Laboratories & Research, Empire State Plaza, Albany, N.Y. 12201. Article: Gas Chromatograph, Model 4160. Manufacturer: Carlo Erba, Italy. Intended use of article: The article is intended to be used to discriminate the toxic members of chlorinated dibensodioxins and chlorinated dibenzofurans. Glass capillary gas chromatograph columns are to be made, which are specific for separations of those two groups of compounds.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has an on-column injection system. The National Bureau of Standards advises in its memorandum dated September 22, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Program Staff.

[FR Doc. 80-37815 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

Southern Illinois University of Carbondale; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this 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. 80-00230. Applicant: Southern Illinois University of Carbondale, Carbondale, Illinois 62901. Article: Specific Heat Unit for CP-C Microcalorimeter System. Manufacturer: Techneurop Inc., Canada. Intended use of article: The article is intended to be used with an existing microcalorimeter which is being used for the study of biologically important reactions including interactions of small molecules with proteins, nucleic acids, membrane components and other biological macromolecules. (Ligand or small molecule binding to macromolecules will include both aqueous solutions as well as dissolved aqueous gaseous solutions. However, primary use of the article will be for the study of denaturation of biomacromolecules by solutes and solvents). The article is also used for educational purposes in the following courses: Chemistry 598, Graduate Research and Chemistry 600, Dissertation. Application received by Commssioner of Customs: March 11, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (August 28, 1979).

Reasons: The foreign article provides a sensitivity of 0.1 microcalorie per second and a stability better than 0.001 degree Centigrade. The Department of Health and Human Services advises in its memorandum dated August 7, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-37816 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

Tufts University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this 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 NW., Washington, D.C. 20230.

Docket No. 80-00236. Applicant: Tufts University, Department of Chemistry, 62 Talbot Avenue, Medford, MA 02115. Article: Pulsed CO_2 Laser, Model 103 and Accessories. Manufactured: Lumonics Research Limited, Canada. Intended use of article: The article is intended to be used in the research project entitled: Infrared Laser Chemistry; Intramolecular Energy Transfer and Unimolecular Isomerization in Methylisocyanide. The primary activity of this research is directed at determining the limits either to molecule specific or to mode specific energy deposition and reactions. In addition, the article will be used by graduate students working toward a Doctorate in chemistry. Application received by Commissioner of Customs: March 13, 1980. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a nine joules energy pulse. The National Bureau of Standards advises in its memorandum dated September 11, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-37817 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

University of Illinois; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this 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. 80-00226. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, Urbana, Illinois 61801. Article: Submicron Mask Aligner and Accessory. Manufacturer: Karl Suess, West Germany. Intended use of article: The article is intended to be used in the processing of submicron geometry, high speed, semiconductor devices. Experiments to be conducted will include fabrication of semiconductor devices with submicron geometry using epitaxially grown III-V compound semiconductors such as GaAs, AlGaAs, etc; and the study of the properties of these devices. The article will also be used by graduate students in research in III-V compound semiconductor devices. Application received by Commissioner of Customs: March 10, 1980.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (February 29, 1980).

Reasons: The foreign article provides a line resolution as low as 0.8 microns. The National Bureau of Standards advises in its memorandum dated August 19, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article was intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Program Staff.

[FR Doc. 80-37818 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

University of Minnesota; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended. (15 CFR 301).

A copy of the record pertaining to this 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. 80-00229. Applicant: University of Minnesota, Department of Chemical Engineering & Materials Science, 151 Amundson Hall, 421 Washington, Avenue, S.E., Minneapolis MN 55455. Article: TEA CO_2 Laser, Model 10-2 with accessories. Manufacturer: Lumonics Research Limited, Canada. Intended use of Article: The article is intended to be used by postgraduate chemical engineers to do fundamental research in photochemical reaction engineering. Appropriate prototype reactions will be used to investigate: (1) Greater than thermal equilibrium yields, (2) Enhancement of reaction rates in thermal reactions, and (3) Selective reactions. In addition to gaining fundamental information about these, the data obtained in this work will be used as a guide for constructing appropriate models and design equations for infrared photochemical

reactors. Application received by Commissioner of Customs: March 11, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides 10 joules energy per peak power in the multimode. The National Bureau of Standards advises in its memorandum dated August 5, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument of apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-37819 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

University of Pennsylvania; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this 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, DC. 20230.

Docket No. 80-00234. Applicant: University of Pennsylvania, Department of Psychology, 3815 Walnut Street, Philadelphia, PA 19104. ARTICLE: CRT Display Unit. Manufacturer: Peter Joyce Electronics, United Kingdom. Intended Use of article: The article is to be used in a research program on pattern vision. Application received by Commissioner of Customs: March 12, 1980.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides controlled rotation of zero to 360 degrees in its display raster with special control of contrast in the luminous patterns presented. The Department of Health and Human Services advises in its memorandum dated August 7, 1980 that (1) the capability of the foreign article decribed above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assitance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-37820 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

University of Rochester; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review betwen 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. 80-00066. Applicant: University of Rochester, River Campus, Rochester, New York, 14627. Article: NMR Spectrometer System, Model WH-400 with Accessories. Manufacturer: Bruker Instruments, Inc., Switzerland. Intended use of article: The article is intended to be used for investigations of a broad range of chemical and biological molecules. All of the compounds will be dissolved in appropriate solvents for study on the article. The experiments to be conducted will include the recording of routine spectra under the condition of the very large magnetic field available in this instrument, and the measurement of ^{1}H, ^{2}H, ^{13}C, and ^{31}P spectra under conditions in which both homonuclear and heteronuclear decoupling will be utilized. The values of the chemical shifts, the coupling constants, and the relaxation time (T_1 and T_2) will be measured. The temperature dependence of these parameters for a variety of systems will be also investigated in order to obtain kinetic parameters. Primary research will include the following projects: Total Synthesis of Natural Products, Magnetic Resonance Studies of Drug-Nucleic Acid Complexes, and synthetic Organic Chemistry. Application received by Commissioner of Customs: December 12, 1979.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a 31-phosporus decoupling coil on its proton probe. The Department of Health and Human Services advises in its memorandum dated August 6, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-37821 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

Perchlorethylene From Belgium; Final Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On October 2, 1980, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on perchlorethylene from Belgium. The scope of the review was limited to the only known producer—Solvay & CIE—and to the period February 2, 1979 through March 31, 1980. Interested parties were given an opportunity to submit oral or written comments on this preliminary determination. The Department received no comments.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur N. DuBois, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–3814).

SUPPLEMENTARY INFORMATION:

Procedural Background

On May 18, 1979, a dumping finding with respect to perchlorethylene from Belgium was published in the **Federal Register** as Treasury Decision 79–150 (44 FR 29045–6).

On October 2, 1980, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping finding on perchlorethylene from Belgium (45 FR 65271–2).

Scope of the Review

The Department knows of only one exporter of Belgian perchlorethylene to the United States—Solvay & CIE. The review covered the period February 2, 1979 through March 31, 1980. There have been no imports of perchlorethylene from Belgium since the time of the fair value investigation and there are no known unliquidated entries. The preliminary results specified a cash deposit of estimated duty of 150 percent, based on the fair value weighted-average margin for Solvay & CIE. Interested parties were afforded an opportuanity to furnish oral or written comments. The Department received no such comments.

Results of the Review

As a result of our review, I determine that a cash deposit, as required by § 353.48(b) of Commerce Regulations, of 150 percent of the entered value, shall be required on all shipments of perchlorethylene from Belgium entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. This requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with § 353.53 of Commerce Regulations (19 CFR 353.53, 45 FR 8205).

John D. Greenwald,

Deputy Assistant Secretary, Import Administration.

December 2, 1980.

[FR Doc. 80-37807 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

Perchlorethylene From France; Final Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On October 2, 1980, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on perchlorethylene from France. The scope of the review was limited to the only known producer—Rhone Poulenc Petrochimie—and to the period February 2, 1979 through April 30, 1980. Interested parties were given an opportunity to submit oral or written comments on this preliminary determination. The Department received no comments.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur N. DuBois, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–3814).

SUPPLEMENTARY INFORMATION:

Procedural Background

On May 18, 1979, a dumping finding with respect to perchlorethylene from France was published in the **Federal Register** as Treasury Decision 79–149 (44 FR 29045).

On October 2, 1980, the Department of Commerce ("the Department") published the preliminary results of its

administrative review of the antidumping finding on perchlorethylene from France (45 FR 65271).

Scope of the Review

The Department knows of only one exporter of French perchlorethylene to the United States—Rhone Poulenc Petrochimie. The review covered the period February 2, 1979 through April 30, 1980. There have been no imports of perchlorethylene from France since the time of the fair value investigation and there are no known unliquidated entries. The preliminary results specified a cash deposit of estimated duty of 47.82 percent, based on the fair value weighted-margin for Rhone Poulenc Petrochimie. Interested parties were afforded an opportunity to furnish oral or written comments. The Department received no such comments.

Results of the Review

As a result of our review, I determine that a cash deposit, as required by § 353.48(b) of Commerce Regulations, of 47.82 percent of the entered value, shall be required on all shipments of perchlorethylene from France entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. This requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with § 353.53 of Commerce Regulations (19 CFR 353.53, 45 FR 8205).

John D. Greenwald,

Deputy Assistant Secretary, Import Administration.

December 2, 1980.

[FR Doc. 80-37808 Filed 12-4-80; 8:45 a.m.]

BILLING CODE 3510-25-M

Perchlorethylene From Italy; Final Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On October 2, 1980, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on perchlorethylene from Italy. The scope of the review was limited to the only known producers—Rumianca S.p.A. and Montedison S.p.A.— and to the period February 2, 1979, through April 30, 1980. Interested parties were given an opportunity to submit oral or written comments on this preliminary determination. The Department received no comments.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur N. DuBois, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–3814).

SUPPLEMENTARY INFORMATION:

Procedural Background

On May 18, 1979, a dumping finding with respect to perchlorethylene from Italy was published in the **Federal Register** as Treasury Decision 79–151 (44 FR 29046).

On October 2, 1980, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping finding on perchlorethylene from Italy (45 FR 62570–1).

Scope of the Review

The Department knows of only two exporters of Italian perchlorethylene to the United States. Those firms are Rumianca S.p.A. and Montedison S.p.A. The review covered the period February 3, 1979 through April 30, 1980. There have been no imports of perchlorethylene from Italy since the time of the fair value investigation and there are no known unliquidated entries. The preliminary results specified a cash deposit of estimated duty of 37.8 percent, in the case of Rumianca, and 29 percent in the case of Montedison, based on the fair value weighted-average margins for those firms. Interested parties were afforded an opportunity to furnish oral or written comments. The Department received no such comments.

Results of the Review

As a result of our review, I determine that a cash deposit, as required by § 353.48(b) of Commerce Regulations, of 37.8 percent of the entered value in the case of Rumianca, 29 percent of the entered value in the case of Montedison, and 37.8 percent for shipments from all other exporters shall be required on all shipments of perchlorethylene from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. This requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with § 353.53 of Commerce Regulations (19 CFR 353.53, 45 FR 8205).

John D. Greenwald,

Deputy Assistant Secretary, Import Administration.

November 21, 1980.

[FR Doc. 80-37809 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-25-M

Portland Cement, Other Than White, Nonstaining Portland Cement, From Belgium; Preliminary Results of Administrative Review of Antidumping Finding and of Tentative Determination To Revoke

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of preliminary results of administrative review of antidumping finding and of tentative determination to revoke.

SUMMARY: This notice is to advise the public that, as a result of an administrative review of the antidumping finding on portland cement, other than white, nonstaining portland cement, from Belgium, the Department of Commerce has tentatively determined to revoke such finding. There have been no imports of this merchandise from Belgium for a period of seventeen years. Interested parties are invited to comment on this decision.

EFFECTIVE DATE: December 5, 1980.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–3814).

SUPPLEMENTARY INFORMATION:

Procedural Background

On July 20, 1961, a dumping finding with respect to portland cement, other than white, nonstaining portland cement, from Belgium, excluding importations from Cimenteries et Briqueteries Reunies, was published in the **Federal Register** as Treasury Decision 55428 (26 FR 6511). A "Notice of Tentative Determination to Modify or Revoke Dumping Finding" with respect to this merchandise was published by the Department of the Treasury in the **Federal Register** on June 18, 1979 (44 FR 35075). Reasons for the tentative determination were given in the notice and interested parties were afforded an opportunity to present written or oral views. Treasury received no written submissions or requests for oral presentation of views. However, Treasury took no final action on the proposed revocation.

On January 1, 1980, the provisions of Title I of the Trade Agreements Act of

1979 became effective. On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the **Federal Register** of March 28, 1980 (45 FR 20511–12) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act of 1930 ("the Act"), the Department has conducted an administrative review of the finding on portland cement, other than white, nonstaining portland cement, from Belgium.

Scope of the Review

Imports covered by this review are portland cement, other than white, nonstaining portland cement, classifiable under item 511.14 of the Tariff Schedules of the United States Annotated (TSUSA). Cimenteries et Briqueteries Reunies was excluded from the finding. Another firm, Ciments Portland Artificiels Belges d'Harmignies, was merged into Cimenteries et Briqueteries Reunies n 1963. Therefore, this review covers the only known exporter, Ciments d'Obourg, and the period July 20, 1961, the date of the finding, to June 18, 1979, the date that the "Tentative Determination to Modify or Revoke Dumping Finding" was published by the Treasury Department.

Results of the Review

There are no known unliquidated entries. There have been no known shipments for more than seventeen years.

As provided for in § 353.54(e) of the Commerce Regulations, Ciments d'Obourg has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that the merchandise thereafter imported in to the United States is being sold at less than fair value.

Tentative Determination

As a result of our review I tentatively determine that there are no reasons why the finding on portland cement, other than white, nonstaining portland cement, from Belgium, should not be revoked.

Interested parties may submit written comments within 30 days from the date of this notice and may request disclosure and/or a hearing within 15 days of the date of this notice.

The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review, tentative determination to revoke and notice publication are in accordance with section 751 (a)(1) and (c) of the Act (19 U.S.C. 1675 (a)(1), (c)) and § 353.54(e) of Commerce Regulations (19 CFR 353.54 (e), 45 FR 8205–6).

John D. Greenwald,

Deputy Assistant Secretary, for Import Administration.

December 2, 1980.

[FR Doc. 80–37810 Filed 12–4–80; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Modification of Marine Mammal Permit

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the regulations governing the taking and importing of marine mammals (50 CFR Part 216), and Special Condition C-f of Permit No. 188 issued to Dr. Edward Shallenberger, Kailua, Hawaii, on June 30, 1977, (42 FR 35876), said permit is modified in the following manner:

Modification No. 1: Section B–8 is deleted and substituted therefor:

"B–8. This Permit is valid with respect to the taking authorized herein until December 31, 1983."

The Permit and documents in support of the modification are available in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W. Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731

Dated: November 26, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80–37766 Filed 12–4–80; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Pitman-Moore, Inc.; Intent To Grant Limited Exclusive Patent License

Notice is hereby given that the National Technical Information Service (NTIS) proposed to grant to Pitman-Moore, Inc. (PMI) of Washington Crossing, New Jersey a limited exclusive right in the United States and in some or all of a group of foreign countries including Argentina, Australia, Austria, Brazil, France, West Germany, Great Britain, Japan, Netherlands, South Africa, Sweden, and Switzerland for the manufacture, use and sale of the products and processes embodied in the following U.S. Government-owned invention covered by U.S. Patent 4,189,535 for "Serum Cell Growth Promoting Materials" and foreign patent application counterparts in the countries listed herein, the rights being assigned to the United States of America as represented by the Secretary of Agriculture as to the U.S. patent and as represented by the Secretary, U.S. Department of Commerce as to the foreign applications. Custody of the U.S. rights to the invention has also been transferred to the Secretary, U.S. Department of Commerce.

Copies of the U.S. patent listed herein can be purchased from the Commissioner of Patents and Trademarks, Washington, D.C. 20231 at a cost of $0.50 per copy.

With respect to the U.S. Government-owned invention identified herein a public announcement stating that the invention was available for licensing in the United States and perhaps also in foreign countries was published in the **Federal Register** (FR) shortly after the U.S. patent application was filed. These announcements were made more than six months prior to this notice. The application U.S. Serial Number 935,217 was filed on August 21, 1978 and announced in the **Federal Register** of September 19, 1979, p. 54327; in the NTIS publication *Government Inventions for Licensing* of September 25, 1979, p. 398; and in the *Official Gazette* of the Patent and Trademark Office of October 30, 1979, p. 987 OG 36. To date, these and other promotional efforts have not resulted in the request for, or granting of, any licenses under these patent applications. It has been determined by the Director, NTIS therefore, in accordance with the Federal Property Management Regulations for Licensing of Government-owned Inventions 41 CFR 101–4.103.3, that this invention is available for limited exclusive license.

The limited exlusive license proposed to be granted by NTIS to PMI will be a royalty-bearing license for a term of five years from the effective date of the license agreement. The license will be revocable in accordance with 41 CFR 101–4.104.5.

The proposed limited exclusive license granted to PMI will be subject to an irrevocable, nonexclusive, nontransferable, royalty-free right in the U.S. Government to make, use or sell the licensed invention throughout the world by or through contract on behalf of the U.S. Government or any foreign government pursuant to a treaty or agreement with the United States.

The proposed limited exclusive license will be granted by NTIS to PMI unless February 3, 1981, NTIS receives (1) an application for a nonexclusive license from a responsible U.S. applicant to practice the invention identified herein in the United States or foreign countries listed herein and NTIS determines that such applicant is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or (2) written evidence and argument which establishes that it would not be in the public interest to grant the proposed limited exclusive license to PMI.

Written data, inquiries, comments or objections concerning this proposed limited exlusive license should be submitted to the Office of Government Inventions and Patents, National Technical Information Service, Springfield, Va. 22161. NTIS shall maintain and make available for public inspection a record of all decisions made in this matter and the basis therefor. This record shall contain copies of all written data, inquiries, comments, or objections received by NTIS and pertaining to the proposed limited exclusive license.

Dated: December 1, 1980.

Melvin S. Day,

Director, National Technical Information Service.

[FR Doc. 80-37739 Filed 12-4-80; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974; Systems Notices—Notice of Intended Revision

Pursuant to the Privacy Act of 1974,[1] the Commodity Futures Trading Commission ("Commission") has classified certain of its records into systems of records.[2] Three of those systems, CFTC–12,[3] CFTC–20 [4] and CFTC–22,[5] contain registration Forms 7–R and 8–R and related supplements and schedules that have been filed with the Commission, either by registrants or by individuals affiliated in certain specified capacities with futures commission merchants, commodity trading advisors, and commodity pool operators.[6] Consistent with the Commission's revision of its registration regulations published today in the **Federal Register**, the Commission intends to alter those systems of records so that they include completed fingerprint cards and, where appropriate, new Forms 8–S and 8–T. The Commission further contemplates the combination of two of those existing systems—CFTC–20 and CFTC–22—into one system of records. Although these measures are not subject to the notice-and-comment requirements of the Administrative Procedure Act [7] or of the Privacy Act,[8] the Commission is publishing the revised systems notices set forth below to give affected individuals prior notice of these changes.

In addition, the Commission is proposing for public comment a new "routine use" [9] for those systems of records which would permit disclosures by the Commission of information the Commission may receive in the course of its processing of applications for registration of associated persons.

CFTC–12

System name:

Fitness Investigations—CFTC.

System location:

These records are located in the Division of Trading and Markets in the Commission's principal offices at 2033 K Street, NW., Washington, D.C. 20581. Limited records are located in the Chicago regional office, 233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606.

Categories of individuals covered by the system:

Persons who have applied to the Commission for registration as an associated person or as a floor broker and principals (as defined in 17 CFR 3.1) of futures commission merchants, commodity trading advisors and commodity pool operators.

Categories of records in the system:

Contains various information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system includes copies of applications for registration (Forms 7–R and 8–R) and biographical supplements (Form 8–R) as well as fingerprint cards. It also includes correspondence, reports and memoranda reflecting information developed from various sources outside the agency. The system contains records of the CFTC investigation.

Authority for maintenance of the system:

Sections 4n(6) and 8a(2)(B) of the Commodity Exchange Act, 7 U.S.C. 6n(6) and 12a(2)(B).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The routine uses applicable to this system of records are set forth in the introduction to these system notices under the caption "General Statement of Routine Uses." In addition, information contained in this system of records may be disclosed in connection with the certification by a futures commission merchant of an application for registration of an associated person.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders and computer tapes.

Retrievability:

By the name of the firm or individual.

Safeguards:

Records are maintained in locked cabinets.

Retention and disposal:

The records are maintained on the premises for three years, then held in the Federal Records Center for seven years before being destroyed.

System manager(s) and address:

The Assistant Director for Registration, Division of Trading and Markets in the Commission's principal office and the Chief, Registration Branch, Central Region, Division of Trading and Markets, Commodity

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[1] 5 U.S.C. 552a.

[2] The Privacy Act defines a "system of records" as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual[.]" 5 U.S.C. 552a(a)(5).

[3] Fitness Investigations—CFTC.

[4] Registration of futures commission merchants, commodity trading advisors and commodity pool operators—CFTC.

[5] Registration of associated persons and floor brokers—CFTC.

[6] These systems of records are more fully described in the Commission's publication, pursuant to 5 U.S.C. 552a(e)(4), of the notice and character of each system of records maintained by the Commission. 45 FR 28391, 28399–400, 28405–06 (April 29, 1980).

[7] 5 U.S.C. 553. The action described above relates solely to agency organization, procedure, or practice. Prior notice and an opportunity to comment are, therefore, not required. 5 U.S.C. 553(b).

[8] *See* 5 U.S.C. 552a(o); *cf.* 5 U.S.C. 552a(e)(11), (f), (j), (k).

[9] *See* 5 U.S.C. 552a(a)(7). The Commission has already adopted eight routine uses which would also apply to these systems of records. These existing routine uses are set forth in their entirety in the Commission's annual publication of the notice and character of each of its systems of records, 45 FR 28391, 28393 (April 29, 1980), and are summarized in the Privacy Act Notice to proposed Forms 8–R, 8–S and 8–T which are being published today for public comment in the **Federal Register**.

Futures Trading Commission, 233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606. Addresses of CFTC offices are set forth in the introduction to these system notices under the caption "The Location of Systems of Records."

Notification procedure:

Individuals seeking to determine whether this system of records contains information about themselves should address their inquiries to the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington D.C. 20581. Telephone: (202) 254–3382.

Record access procedures:

Individuals seeking access to records about themselves in this system of records should address their inquiries to the FOI, Privacy and Sunshine Acts compliance staff at the address listed in the notification section above.

Contesting record procedures:

Individuals contesting the content of records about themselves contained in this system of records should address their inquiries to the FOI, Privacy and Sunshine Acts compliance staff at the address listed in the notification section above.

Record source categories:

The individual on whom the record is maintained, his employer, federal, state, and local regulatory and law enforcement agencies, commodity and securities exchanges, National Association of Securities Dealers, and other miscellaneous sources.

CFTC–20

System name:

System name:
Registration of Futures Commission Merchants, Floor Brokers, Associated Persons, Commodity Trading Advisors and Commodity Pool Operators—CFTC.

System location:

The primary files are maintained in the Chicago office. All CFTC offices have summary information in the form of microfiche records. Addresses and telephone numbers of these offices are set forth in the introduction to these system notices under the caption "The Location of Systems of Records."

Categories of individuals covered by the system:

Persons who have applied to the Commission for registration as an associated person or as a floor broker and principals (as defined in 17 CFR 3.1) of futures commission merchants, commodity trading advisors and commodity pool operators.

Categories of records in the system:

Contains information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system includes applications for registration (Forms 7–R, 8–R and 8–S) and biographical supplements (Form 8–R), schedules and supplementary attachments to those Forms, fingerprint cards, and Notices of Termination (Form 8–T). The system also includes correspondence relating to registration between the Commission and the applicant, registrant or principal as well as reports reflecting information developed from various sources outside the agency. A computerized system, consisting primarily of information taken from the Form 8–R, is maintained by the Chicago office. The computer memory includes the name, date and place of birth, social security number (optional), fitness, exchange membership (floor brokers only), firm affiliation, and the residence or business address, or both, of each associated person, floor broker, and principal. In addition to the above, the computer memory also includes information relating to education, employment and military experience. Monthly microfiche records list the name, date and place of birth, social security number (optional), business address, membership affiliation and fitness of all registered floor brokers and the name, date and place of birth, social security number (optional), residence address, firm affiliation and fitness of all associated persons and principals. These microfiche records, as well as non-confidential portions of applications for registration and biographical supplements are considered to be public records and are available to any person for inspection and copying. In addition, certain auxiliary records, such as card indices, are maintained which summarize information contained in the system regarding each associated person, floor broker and principal.

Authority for maintenance of the system:

Sections 4f(1), 4k(2), 4n(1), 8a(1) and 8a(2) of the Commodity Exchange Act, 7 U.S.C. 6f(1), 6k(2), 6n(1), 12a(1) and 12a(2).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The routine uses applicable to this system of records are set forth in the introduction to these system notices under the caption "General Statement of Routine Uses." In addition, information contained in this system of records may be disclosed in connection with the certification by a futures commission merchant of an application for registration of an associated person.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage:

Records are maintained in a computer memory and in manual form in file folders, on computer printouts, index cards and microfiche records.

Retrievability:

By the name of the individual or firm. Where applicable, the computer cross-indexes the individual's primary registration file to the name of the futures commission merchant, commodity trading advisor or commodity pool operator with whom the individual is associated or affiliated.

Safeguards:

Protection of non-public records is afforded by general office security measures. Records are located in secured rooms or on secured premises with access limited to those whose official duties require access. In appropriate cases, the records are maintained in lockable file cabinets.

Retention and disposal:

Applications for registration (Forms 7–R, 8–R and 8–S) and biographical supplements (Form 8–R), related documents and correspondence are maintained on the premises for three years after the individual's registration, or that of the firm with which the individual is affiliated as a principal, becomes inactive. Records are then held in the Federal Records Center for seven years before being destroyed. The computer memory is maintained permanently on the premises and updated periodically as long as the individual remains registered or affiliated with a registrant as a principal. Computer printouts are maintained on the premises for six months and then destroyed. Microfiche records are maintained permanently on the premises.

System manager(s) and address:

Chief, Registration Branch, Central Region, Division of Trading and Markets, Commodity Futures Trading Commission, 233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606.

Notification procedure:

Individuals seeking to determine whether this system of records contains information about themselves should address their inquires to the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254–3382.

Record access procedures:

Individuals seeking access to records about themselves in this system of records should address their inquiries to the FOI, Privacy and Sunshine Acts compliance staff at the address listed in notification section above.

Contesting record procedures:

Individuals contesting the content of records about themselves contained in this system of records should address their inquiries to the FOI, Privacy and Sunshine Acts compliance Staff at the Address listed in the notification section above.

Record source categories:

The individual on whom the file is maintained, his employer, the commodity and securities exchanges, other government agencies, self-regulatory organizations and persons with relevant knowledge about the individual. The computer record is prepared from the application or biographical supplement and information developed during the fitness inquiry.

Issued in Washington, D.C. on October 30, 1980 by the Commission.

Jane K. Stuckey,

Secretary of the Commission

[FR Doc. 80-37880 Filed 12-4-80; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Mississippi River and Tributaries, Yazoo River Basin, Bear Creek, Mississippi, Phase I Project

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Description of Action:* The project objectives are to reduce damages due to flooding, conserve and enhance remaining fish and wildlife resources, and make a positive contribution to the conservation, preservation, and enhancement of significant natural environmental and cultural resources within the project area. The project plan that is eventually selected for implementation will be the plan which best satisfies the project objectives.

2. *Alternatives to Be Considered:* Consideration has been given to several alternatives which address the project objectives. These alternatives include no action and nonstructural and structural alternatives. Nonstructural alternatives consist of flood plain regulation and floodproofing. The four structural alternatives considered consist of clearing and snagging, channel cleanout, and/or channel enlargement. Two structural alternatives combine clearing and snagging and channel enlargement with a diversion scheme.

3. *Description of Scoping Process:*

a. *Public involvement.* Coordination has been maintained with the general public and with interested agencies throughout formulation and development of the Bear Creek Phase I Project alternative plans. All interested parties are invited to participate in review of the various project proposals. A public meeting is scheduled in early 1981.

b. *Issues to be analyzed in the DEIS.* Impacts of the project on water quality, recreational opportunities, the aquatic ecosystem, the terrestrial ecosystem, endangered species, socioeconomic elements, and archeological sites.

c. *Assignments for input into the EIS.* No specific assignments other than Corps of Engineers as lead agency.

d. *Environmental review and consultation requirements.* Review by Federal, state, and local agencies and interested groups and individuals.

4. *Scoping Meeting Schedule:* A scoping meeting has not been scheduled at this time.

5. *Date DEIS Will Be Available to Public:* On or about 30 September 1981.

ADDRESS: Questions About DEIS Can Be Answered By: Ms. Hattie M. Taylor, U.S. Army Corps of Engineers, Vicksburg District, Environmental Analysis Branch, P.O. Box 60, Vicksburg, Mississippi 39180, Phone: FTS 542–5965, Commercial (601) 634–5965.

Dated: November 18, 1980.

Samuel P. Collins, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 80-37742 Filed 12-4-80; 8:45 am]

BILLING CODE 3710-GX-M

DEPARTMENT OF EDUCATION

Grants for Research on Knowledge Use and School Improvement

AGENCY: Department of Education.

ACTION: Application Notice for New Projects Under the Program of Grants for Research on Knowledge Use and School Improvement, National Institute of Education.

Applications are invited for new projects under the program of Grants for Research on Knowledge Use and School Improvement.

Authority for this program is contained in Section 405 of the General Education Provisions Act, as amended (20 U.S.C. 1221e).

This program awards grants to any institution of higher education, State or local educational agency, public or private non-profit or for-profit agency, organization, individual, or any combination of these.

The purpose of the awards is to encourage and assist research to increase or synthesize knowledge on how elementary and secondary schools go about altering their administrative and instructional practices, and how knowledge resources in the form of ideas, new programs, products, or materials can support these changes. The proposed projects will be reviewed in Fiscal Year 1981, and grant awards will be made early in Fiscal Year 1982.

Closing date for transmittal of preapplications: A preapplication for a major grant must be mailed or hand delivered by January 6, 1981.

Closing date for transmittal of application: An application for either a small grant or a major grant must be mailed or hand delivered by *May 6, 1981.*

Applications delivered by mail: An application or a preapplication sent by mail must be addressed to the Proposal Clearinghouse, Mail Stop 1, National Institute of Education, OERI, 1200 19th Street, NW, Washington, D.C., 20208.

The lower left-hand corner of the package should display the words, "Knowledge Use and School Improvement" and the type of document, i.e., an application for a "Small Grant," or a "Major Grant," or a "Preapplication."

The applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. If a preapplication or an application is late, the applicant will be notified that its preapplication or application will not be considered.

Applications delivered by hand: A hand delivered preapplication or application must be taken to the Proposal Clearinghouse, National Institute of Education, Room 813, 1200 19th Street, NW, Washington, D.C.

The Proposal Clearinghouse will accept hand delivered preapplication and application between 8:00 a.m. and 4:30 p.m. (Washington, D.C time) daily, except Saturdays, Sundays, and Federal holidays.

Preapplications and applications that are hand delivered will not be accepted after 4:30 p.m. on the appropriate closing dates.

Preapplications: An applicant for a major grant must first submit a preapplication (also referred to as a preliminary proposal), and May submit an application only after receipt of NIE comments on the preapplication. Comments made on a preapplication are intended to provide a basis for strengthening any subsequently submitted application. No applicant who has submitted a preapplication will be denied the opportunity to submit an application. An application may be submitted for review at any closing date after comments on the preapplication have been received.

Preapplications are not required for small grants.

Program Information: The program provides for (1) a small grant that is awarded for a project whose duration does not exceed 12 months and whose direct costs do not exceed $15,000, and (2) a major grant that is awarded for a projectfunded in excess of $15,000 in direct costs. A project supported by a major grant may take up to three years to complete. The initial funding period in most cases will not exceed 12 months. Multi-year projects must be justified by an explanation of the need for the extended period. The application must provide an overview of the objectives to be accomplished and activites proposed to accomplish them and an estimated budget necessary to attain the objectives in any years subsequent to the first year. Awards for small and major grants are expected to be made in October 1981.

Available funds: FY 1982 funds of approximately $500,000 will be available. NIE expects to award approximately 5–6 major grants and 4–6 small grants in this competition. The average major grant award is expected to be about $65,000 for a twelve-month period. The average small grant award is expected to be about $15,000.

These estimates, however, do not bind the department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: A program announcement package, which is available to applicants, contains guidelines, a copy of the programs final regulations and instructions on how to apply for a grant. Persons who wish to receive a copy of the program announcement package may request one by sending a self-addressed mailing label to the Knowledge Use and School Improvement Studies Staff, Mail Stop 24, National Institute of Education, OERI, 1200 19th Street, NW, Washington, D.C. 20208. (A stamped envelope is not suitable.) Persons who have requested that their names be placed on the mailing list of the program need not sent a mailing label.

Applicable regulations: Regulations applicable to this program are:

(a) Regulations governing the Grants for Research on Knowledge Use and School Improvement (34 CFR Part 709) as published in the **Federal Register** on August 12, 1980, 45 FR 53788;

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77), as redesignated in the **Federal Register** on November 21, 1980 (45 FR 77368); and

(c) The Administration of Grants Regulations (34 CFR Part 74) as republished in the **Federal Register** on May 9, 1980 (45 FR 30856).

Further information: For further information, contact Mr. Rolf Lehming, Team Leader, Knowledge Use and School Improvement Studies, DIP, NIE, OERI, who is located in Room 619B, 1200 19th Street, NW, Washington, D.C., and whose telephone number is (202) 254–6050.

(20 U.S.C. 1221e)

Dated: December 3, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Development: formerly 13.950)

[FR Doc. 80-38027 Filed 12-4-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

[Delegation Order No. 0204-77]

Delegation of Functions by The Secretary of Energy to the Administrator of the Economic Regulatory Administration

AGENCY: Department of Energy.

ACTION: Notice of delegation.

SUMMARY: Notice is hereby given of a delegation by the Secretary of Energy to the Administrator of the Economic Regulatory Administration (ERA). The delegation transfers to the ERA the Secretary's authorities concerning emergency natural gas purchases and emergency natural gas allocations under section 302 and 303 of the Natural Gas Policy Act of 1978 (NGPA) and emergency prohibitions on the burning of natural gas by electric powerplants and major fuel-burning installations under section 607 of the Public Utility Regulatory Policies Act of 1978 (PURPA). These authorities would be activated only upon a declaration by the President of a natural gas supply emergency under section 301 of the NGPA or section 607(a) of the PURPA.

EFFECTIVE DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: James Beste, Office of General Counsel, Department of Energy, 1000 Independence Ave., S.W., Room 5E-074, GC-15, Washington, D.C. 20461, (202) 252-2900.

SUPPLEMENTARY INFORMATION: Under sections 301 of the NGPA and 607(a) of the PURPA, the President may declare a natural gas supply emergency or extend a previously declared emergency upon a finding that (1) there exists or is imminent a severe natural gas shortage endangering the supply of natural gas for high-priority uses in the United States or any region of the United states and (2) having exhausted other

alternatives to the maximum extent practicable, the exercise of authorities under sections 302 or 303 of the NGPA, and/or section 607 of the PURPA is reasonably necessary.

The authorities pursuant to sections 302 and 303 of the NGPA and section 607 of the PURPA were delegated by the President to the Secretary in Executive Order No. 12235, published in the **Federal Register** on Friday, September 5, 1980. On November 7, 1980, the Secretary further delegated the emergency authorities to the Administrator by the accompanying delegation order.

After the declaration by the President of a natural gas supply emergency, the delegation order authorizes the Administrator, under section 302 of the NGPA, to permit emergency purchase transactions by interstate pipeline companies and local distribution companies served by interstate pipeline companies to meet the natural gas requirements of high-priority users. After the emergency purchase authority is utilized to the maximum extent practicable, the Administrator may implement the authority under section 607 of the PURPA, prohibiting the burning of natural gas by major fuel-burning installations and powerplants. In the event that additional emergency effort are required to assist in meeting the natural gas needs of high-priority users, the Administrator may exercise the NGPA section 303 authority to allocate supplies to interstate pipeline companies, local distribution companies served by interstate pipeline companies and others in the following order: (1) Boiler fuel gas, the use of which has been prohibited pursuant to authority under section 607 of the PURPA, (2) the natural gas supplies of interstate pipeline companies, and (3) supplies owned by end-users and transported by an interstate pipeline.

The delegation order was effective November 7, 1980.

(Department of Energy Organization Act, Pub. L. No. 95-91; E.O. 12009, 42 FR 46267, September 15, 1977, E.O. 12235, 45 FR 58803, September 5, 1980)

Issued in Washington, D.C. on November 26, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

To the Administrator of the Economic Regulatory Administration

Pursuant to the authority delegated to me as the Secretary of Energy ("Secretary") by Executive Order No. 12235, there is hereby delegated to the Administrator of the Economic Regulatory Administration ("Administrator") on a nonexclusive basis the authority to:

1. Carry out the functions under section 302 through 304(c) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3362-3364 and section 607 of the Public Utility Regulatory Policies Act of 1978, 15 U.S.C. 717z.

2. Prescribe orders and regulations to implement sections 302 through 304(c) of the Natural Gas Policy Act of 1978 and section 607 of the Public Utility Regulatory Policies Act of 1978.

3. Consult with the heads of other Executive departments and agencies in carrying out the functions and prescribing the orders and regulations under section 302 through 304(c) of the Natural Gas Policy Act of 1978 and section 607 of the Public Utility Regulatory Policies Act of 1978.

The authority delegated to the Administrator may be further delegated, in whole or in part, as may be appropriate, provided that the Administrator shall not further delegate, in whole or in part, the authority delegated to propose or adopt rules and orders.

In exercising the authority delegated by this Order or as redelegated pursuant thereto, the delegate(s) shall be governed by the rules and regulations of DOE and the policies and procedures prescribed by the Secretary or his or her delegate(s).

All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

Nothing in this Order shall preclude the Secretary from exercising any of the authority so delegated whenever in his or her judgment exercise of such authority is necessary or appropriate to administer the functions vested.

This Order is effective November 7, 1980.

Charles W. Duncan, Jr.,

Secretary of Energy.

[FR Doc. 80-37749 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale to Atomic Energy of Canada, Ltd., of 15 grams of uranium, with 0.674% U-235 content, and 15 grams of uranium, with 0.743% U-235 content, to be used to calibrate a UF_6 mass spectrometer.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of this nuclear material under Contract Number S-CA-298 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than December 22, 1980.

For the Department of Energy.

Dated: December 1, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc.80-37752 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the retransfer of 14 fuel rods containing 29.895 kilograms of uranium, enriched to 3.2% in U-235 from Sweden to the Federal Republic of Germany for factory inspection. After inspection, it is planned that the fuel rods will be retransferred back to Sweden as a part of the reload of fuel for the Ringhals 2 power reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this retransfer, designated as RTD/EU(SW)-55 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 1, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-37753 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the retransfer of 100 milligrams of uranium, enriched to 3% in U-235, and 0.5 milligrams of plutonium, to be used to determine the uncertainty of the analytical measurements of uranium and plutonium isotopes for safeguards purposes.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this retransfer, designated as RTD/IAEA(EU)-13 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than December 22, 1980.

For the Department of Energy.

Dated: December 1, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-37754 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval of contracts for the loan of the following materials:

Contract Number WC-EU-172, to the University of Liege, Belgium, 20 milligrams of Curium-248, 50 milligrams of Plutonium-242, and 100 milligrams of Neptunium-237, to be used to study the thermodynamic and magnetic properties of these materials.

Contract Number WC-CA-25, to the University of British Columbia, Canada, 50 milligrams of Uranium-236, to be used to study the Mu-minus capture in actinides.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: December 1, 1980.

For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-37755 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 80-CERT-033A]

Economic Regulatory Administration

Dow Chemical Co.; Changed Circumstances and Amendment to a Certification of the Use of Natural Gas To Displace Fuel Oil

On September 30, 1980, The Economic Regulatory Administration (ERA) issued the Louisiana Division of the Dow Chemical Company (Dow) a certification pursuant to 10 CFR Part 595 (80-CERT-033, 45 FR 66191, October 6, 1980) of an eligible use of a total volume of 1,500 million cubic feet (MMcf) of natural gas to displace 240,000 barrels of No. 6 fuel oil (.7 percent maximum sulfur) at Dow's Plaquemine Plant in Plaquemine, Louisiana. Due to the limited availability of the gas as represented by Dow in the original application, the certificate was only issued for a short term and expired on October 31, 1980.

On October 16, 1980, Dow notified ERA of changed circumstances concerning the delivery and use of the gas volumes certified and requested that the expiration date of the certification be extended until May 31, 1981, the current termination date of this fuel oil displacement program. Notice of the changed circumstances and the requested amendment was published in the **Federal Register** (45 FR 73730, November 6, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

Dow requests that its certification be extended until May 31, 1981, because it cannot utilize the volumes of gas purchased for fuel oil displacement by October 31. The application and certificate indicate that the eligible seller of the gas is the Alabama Tennessee Natural Gas Company (Alabama-Tennessee), and the gas will be transported through intrastate pipelines by the Louisiana Resources Company (Louisiana Resources), the Louisiana Intrastate Gas Corporation, the pipeline department of Dow, and by the Tennessee Gas Pipeline Company, an interstate pipeline. Dow now indicates that the seller (Alabama-Tennessee) will deliver gas to Louisiana Resources via the Tennessee Gas Transmission Company in daily quantities greater than Dow could utilize to displace fuel oil before October 31, 1980. Louisiana Resources has agreed to redeliver the natural gas to Dow at lower daily rates over a several month period. Dow has assured ERA that all of the gas certified and purchased from Alabama-Tennessee prior to October 31, 1980, will be used to displace fuel oil during the extended term of the certificate.

The ERA has carefully reviewed Dow's changed circumstances and request for amendment in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Dow's application and amendment request satisfies the criteria enumerated in 10 Part 595, and, therefore, has granted the amended certification to be effective upon issuance and transmitted that amended certification to the Federal Energy Regulatory Commission. Dow has informed the ERA that it did not expect to use the natural gas during the interim period between October 31, 1980, and the date of issuance of this amendment.

Thus, the lack of continuity with the original certificate will not result in any reduction in the amount of fuel oil displacement. More detailed information, including a copy of Dow's application, request for amendment, transmittal letter, and the actual amended certification are available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG–55, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., December 1, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-37842 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-80-029; OFC Case Numbers 55217-9116-01 through 10-12]

Olin Corp.; Availability of Tentative Staff Analysis

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Availability of Tentative Staff Analysis.

SUMMARY: On August 25, 1980, the Olin Corporation (Olin) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order which would exempt ten leased, oil and gas-fired packaged boilers (hereafter oil/gas-fired boilers) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) Title II of FUA prohibits the use of petroleum or natural gas as a primary energy source in certain new major fuel burning installations (MFBI's). Pertinent procedures and criteria for petitioning for exemption from the prohibitions of FUA are contained in 10 CFR Part 500 and 501 and 10 CFR Parts 503, published on June 6, 1980, at 45 FR 38276 and 38302 respectively.

Under the provisions of 10 CFR 503.43(c), Olin has petitioned for ten separate scheduled equipment outages exemptions, one for each oil/gas-fired boiler it proposes to lease and use during each annual scheduled outage of its largest main boiler (boiler No. 8) for inspection, maintenance and repair for the years 1980 through 1989, at its Ecusta Paper and Film Group, Pisgah Forest, North Carolina facility. As stated by Olin in its petition, each of the packaged boilers will be of like size, with a maximum design heat input rate requirement of 155 million Btu's per hour and will be equipped with a combination burner for No. 2 fuel oil and natural gas. Natural gas will be the preferred fuel when it is available.

ERA accepted the petition on September 19, 1980, and published notice of its acceptance in the **Federal Register** on September 30, 1980 at 45 FR 64627. The Notice of Acceptance provided for a 45-day comment preiod during which interested persons could submit written comments and request a public hearing on the petition for exemptions. The period for submitting written comment and to request a public hearing expired on November 14, 1980. No comments were received nor was a public hearing requested.

On November 5, 1980, Olin filed a revision to its petition which stated that because market conditions are such as to allow reduction in production during the 1980 scheduled outage of main boiler No. 8, a leased boiler will not be used. Olin's revision changed the period for which the ten exemptions were requested to cover the use of leased packaged boilers during the years 1981 through 1990, and contained a revised schedule of operation reflecting the projected use of such MFBI's for those years. ERA has determined that Olin's petition, as revised on November 5, 1980, is complete, and its is accepted as filed in accordance with 10 CFR 501.3(d). In order to assure adequate notice of Olin's petition revision, which requests deferral of each of its requested exceptions for one year, ERA is providing an extended comment period of 45-days on this Notice of Availability of Tentative Staff Analysis.

Based upon ERA's review and analysis of the information presently contained in the record of this proceeding, a Tentative Staff Analysis has been completed which recommends that ERA issue an order granting a scheduled equipment outages exemption for each of the ten oil/gas-fired boilers Olin proposes to lease and operate, one each year, during the years 1981 through 1990.

ERA will issue a final order granting or denying the petition for the requested scheduled equipment outages exemptions within six months after the public comment period provided for in this notice has expired, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the **Federal Register.**

As provided for in 10 CFR 501.64, interested persons are invited to submit written comments in regard to this matter, and any interested person may submit a written request that ERA convene a public hearing.

DATES: Written comments on the Tentative Staff Analysis are due on or before January 19, 1981. A request for public hearing must also be made within the same 45-day comment period.

ADDRESSES: Fifteen copies of written comments or a request for public hearing should be submitted to: Ecomonic Regulatory Administration, Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, NW., Washington, D.C. 20461.

Docket Number ERA–FC–80–029 should be printed clearly on the outside of the envelope and on the document contained therein.

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) 653–4226.

Robert Goodie, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128–J, Washington, D.C. 20461, Phone (202) 653–4257

Allan J. Stein, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B–178, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–2967.

The public file containing a copy of the Tentative Staff Analysis and other 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.–4:30 p.m.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum as a primary energy source in new MFBI's consisting of a boiler unless an exemption for such use has been granted by ERA.

Olin proposes to use annually at its Ecusta Paper and Film Group facility, Pisgah Forest, North Carolina, a series of leased, oil and gas-fired packaged boilers, one each year, during the annual scheduled outage of its largest main boiler (boiler No. 8) for inspection, maintenance and repairs. The leased, oil/gas-fired boiler will be used to supply steam to Olin's manufacturing operation in order to avoid production losses which Olin states would occur while its largest main boiler is shut down. ERA's authority under FUA to grant an exemption is unit specific; that is, a permanent exemption may be granted by order for a single installation. Accordingly, under the provisions of 10 CFR 503.43, Olin has

petitioned for ten separate scheduled equipment outages exemptions, one for each single oil/gas-fired boiler it proposes to lease and use each year, for the years 1981 through 1990 during the scheduled outage of its main boiler No. 8.

Under the authority of Section 212(j) of the Act, 10 CFR 503.43 sets forth eligibility criteria and evidentiary requirements for a permanent exemption for installations to meet scheduled equipment outages. To qualify a petitioner must demonstrate that his routine maintenance schedule does not permit, or could not be adjusted to permit, continuing production or other activity carried on at the site unless ERA grants this exemption; that the pertinent unit will be used only during those periods when other units are not in operation for reason of scheduled outage; and, where projected use of a unit will exceed an average of 28 days per year over a three-year period, that he cannot meet his requirements by using an alternate fuel. If the use of the unit during periods of scheduled equipment outages is not to exceed an average of 28 days per year over a three-year period, 10 CFR 503.43(c) provides for a certification alternative in lieu of the evidentiary requirements of 10 CFR 503.43(b). Olin has utilized the certification alternative, and has included in its petition the following duly executed certification for each of the ten requested exemptions:

(1) Its routine maintenance schedule does not permit, or could not be adjusted to permit continuing production or other activity carried on at its Pisgah Forest facility unless ERA grants this exemption.

(2) The use of the proposed units will not exceed an average of 28 days per year over a three-year period;

(3) The units will be used only during those periods when other units are not in operation for reason of scheduled outage in accordance with a schedule of operation submitted simultaneously which contains an estimate of the annual number of days used and fuel consumed. (Such schedule of operation was filed by Olin with its petition and was revised to reflect the change in the period for which the exemptions are requested on November 5, 1980);

(4) Use of a mixture of petroleum or natural gas and an alternate fuel is not commercially and technically feasible;

(5) Pursuant to 10 CFR 503.15(b), a duly executed certification that it will, prior to operating the units under the exemptions, secure all applicable environmental permits and approvals pursuant to, but not limited to, the following: Clean Air Act, Clean Water Act, Rivers and Harbors Act, Coastal Zone Management Act, Resource Conservation and Recovery Act; and

(6) Infomation required by the Environmental Checklist pursuant to 10 CFR 503.15(b).

The ERA staff has examined the certifications made by Olin in its petition and the revised schedule of operation covering Olin's proposed annual use of ten oil/gas-fired packaged boilers for the years 1981 through 1990. It is the ERA staff's determination that the certification in Olin's petition, as revised, fulfill the requirements of 10 CFR 503.43(c). Based upon that review, a Tentative Staff Analysis has been completed which recommends that an order be issued which would grant Olin the ten requested scheduled equipment outages exemptions for the oil/gas-fired boilers it proposes to lease and operate annually during the years 1981 through 1990 while its main boiler No. 8 is shut down for scheduled inspection, maintenance and repairs.

Terms and Conditions

Section 214(a) of FUA gives ERA the authority to attach terms and conditions to any order granting an exemption which are appropriate and consistent with the purposes of the Act. By petitioning for exemptions under the provisions of 10 CFR 503.43(c), Olin, in accordance with 10 CFR 503.43(d), must agree to the terms and conditions specified in that subsection. Such terms and conditions, as enumerated below, must accordingly be attached to any order which would grant the requested exemptions.

(1) Each exempted boiler will be operated only when necessary to meet scheduled equipment outages.

(2) Use of the exempted boilers will not exceed an average of 28 days per year over a three-year period.

(3) The quality of any petroleum to be burned in each exempted boiler as a primary energy source will be of the lowest grade available which is technically feasible, and capable of being burned consistent with applicable environmental requirements.

(4) That prior to operating each exempted boiler, Olin shall secure all applicable environmental permits and approvals pursuant to, but not limited to, the following: Clean Air Act, Clean Water Act, Rivers and Harbors Act, Coastal Zone Management Act and the Resource Conservation and Recovery Act.

Recommended Additional Terms and Conditions

Based upon an analysis of Olin's intended application of the requested scheduled equipment outages exemptions, the ERA staff recommends that in addition to the terms and conditions specified in 10 CFR 503.43(d), any order which would grant the requested exemptions should also be subject to the following terms and conditions:

(1) By this order, each of the ten oil/gas-fired boilers to be leased and operated annually during the years 1981 through 1990 is granted as exemption from the prohibitions of Title II of FUA. Upon disconnection of each boiler, the provisions of the exemption granted that specific boiler are terminated.

(2) When available, natural gas shall be used as the primary energy source in each exempted boiler.

Reporting Requirements. ERA will rely upon the revised schedule of operations filed by Olin as the permanent schedule for operation of each of the ten oil/gas-fired packaged boilers granted an exemption herein. Pursuant to 10 CFR 503.43(e), Olin shall notify ERA, in advance, of any changes to the data contained in the schedule of operation (Exhibit I).

Reports required under this order shall be sent to: Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, NW., Washington, D.C. 20461.

The appropriate OFC Case Number, as listed below, shall be cited on each report filed with ERA pursuant to the above requirement.

Year and Assigned OFC Case Number

1981	55217-9116-01-12
1982	55217-9116-02-12
1983	55217-9116-03-12
1984	55217-9116-04-12
1985	55217-9116-05-12
1986	55217-9116-06-12
1987	55217-9116-07-12
1988	55217-9116-08-12
1989	55217-9116-09-12
1990	55217-9116-10-12

On August 11, 1980, DOE published in the **Federal Register** [45 FR 53199] a notice of proposed amendments to guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). The grant or denial of certain FUA permanent exemptions, including the permanent exemption by certification for scheduled equipment outages of less that 28 days per year, averaged over a three-year period, is among the classes of actions that DOE, pursuant to the guidelines, has proposed be categorically excluded from the requirement to prepare an Environmental Impact Statement pursuant to NEPA. This classification raises a rebuttable presumption that the grant or denial of the exemption will not

significantly affect the quality of the human environment. Olin has certified that it will secure all applicable permits and approvals prior to commencement of operation of each new unit under exemption. The Environmental Checklist completed and certified to by Olin pursuant to 10 CFR 503.15(b) has been reviewed by DOE's Office of Environment, with consultation from the Office of the General Counsel, and it has been determined that Olin's responses to the questions therein indicate that the operation of the oil/gas fired boilers during periods of annual scheduled outages of Olin's largest main boiler will have no impact on those areas regulated by specified laws that impose consultation requirements on DOE, and otherwise affirms the applicability of the categorical exclusion to this FUA action. Therefore, unless substantial questions regarding the categorical exclusion in this instance are raised during the proceeding on Olin's petition which would indicate oherwise, no additional environmental review is deemed to be required.

The Tentative Staff Analysis does not constitute a decision by ERA to grant the requested exemptions. Such a decision will be made in accordance with 10 CFR 501.68 on the basis of the entire record of this proceeding, including any comments received on the Tentative Staff Analysis.

Issued in Washington, D.C., on December 1, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-37841 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-01-M

Union Texas Petroleum Corp.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order and provides an opportunity for public comment on the proposed Consent Order and on potential claims against the refunds deposited in an escrow account established pursuaant to the Consent Order.

DATES: November 19, 1980. Comments by: January 5, 1981.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235 [Phone] (214) 767-7745.

SUPPLEMENTARY INFORMATION: On November 19, 1980, the Office of Enforcement of the ERA executed a proposed Consent Order with Union Texas Petroleum Corporation (UTP) of Houston, Texas, a subsidiary of Allied Chemical Corporation (Allied). Under 10 CFR 205.199J(b), a proposed Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective only after the DOE has received comments with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. Consent Order

Union Texas Petroleum Corporation is a firm engaged in the refining of crude oil, natural gas processor and the marketing of propane, motor gasoline and other refined petroleum products, 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, ERA as a result of its audit of sales of propane, motor gasoline and other refined petroleum products, the DOE and UTP entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the Consent Order was August 19, 1973 through June 1, 1976, and included all sales to certain propane, motor gasoline, and diesel fuel classes of purchaser which wre made during that period.

2. UTP and the DOE have determined the UTP had incorrectly calculated the May 15, 1973 selling prices which were included in the prices charged in certain propane, motor gasoline and diesel sales.

3. In order to expedite resolution of the disputes involved, the DOE and UTP, have agreed to a settlement in the amount of $1,325,000, including interest. The terms of the refund consists of a $1,325,000 cash payment to be refunded within 30 days of the effective date of the Consent Order. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and UTP.

4. 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 the Consent Order, UTP agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the DOE, arising out of the transactions specified in I.1, the sum of $1,325,000 in the manner specified in I.3 above. 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.

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 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 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 of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 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 Union Texas Petroleum Corporation, Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on January 5, 1981. 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 the 24th day of November, 1980.

Herbert F. Buchanan,

Deputy, Southwest District Manager, Economic Regulatory Administration.

[FR Doc. 80-37843 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-01-M

Acceptance of Certain Petitions Filed for Approval of Electric System Compliance Plans

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Acceptance of Certain Petitions Filed for Approval of Electric System Compliance Plans.

SUMMARY: The Powerplant and Industrial Fuel Use Act of 1978 (FUA) prohibits existing electric powerplants from using natural gas as a primary energy source on or after January 1, 1990, and from using natural gas as a primary energy source before 1990 unless they burned natural gas in 1977, and then in no greater proportion than the average yearly proportion used by such powerplants in the calendar years 1974 through 1976.

The Economic Regulatory Administration (ERA) on June 12, 1979, issued an interim rule (44 FR 36002) and on August 1, 1980 the final rule (45 FR 53682) 10 CFR 504.4, implementing the electric utility system compliance option authorized by Section 501 of FUA. The final rule sets forth the criteria and procedures by which owners and operators of existing powerplants may be considered in compliance with the Title III FUA prohibitions on natural gas use by obtaining ERA approval of a system compliance plan. The regulations required a submission of certain elements of a proposed plan by January 1, 1980, and all additional submissions to complete a proposed plan by August 1, 1980.

ERA received petitions for orders for the approval of system compliance plans from 39 eligible utility systems by the August 1, 1980 deadline for submission. Upon preliminary review ERA determined that 13 of those petitions met the minimum requirements of 10 CFR 504.4(b) and published notice of acceptance of those petitions in the Federal Register on September 5, 1980 (45 FR 58948). At that time ERA also noticed its determination, pursuant to 10 CFR 501.3(f), that certain other petitions were incomplete. ERA notified those petitioners of the appropriate steps that they should take within 90 days to cure the defects in their petitions. ERA has received supplemental information from 17 of those petitioners, and has determined, upon preliminary review, that those 17 petitions now appear to meet the minimum requirements of 10 CFR 504.4(b) and is therefore accepting those petitions. In accordance with 10 CFR 501.31 and 10 CFR 501.33, interested persons are invited to submit written comments in regard to this matter. Also, any interested person may submit a written request for a public hearing.

DATE: Written comments and requests for a public hearing are due on or before February 1, 1981.

ADDRESSES: Fifteen copies of written comments or of any request for a public hearing shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3214, 2000 M Street NW., Washington, D.C. 20461.

Docket Number ERA–FC–80–040 should be printed clearly on the outside of the envelope and the document contained therein.

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, D.C. 20461, (202) 653–4055

James W. Workman, Director, Powerplants Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room 3128I, Washington, D.C. 20461, (202) 653–4268

Henry K. Garson, Acting Assistant General Counsel for Coal Regulations, Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6B–178, Washington, D.C. 20585, (202) 252–2967

SUPPLEMENTARY INFORMATION: On June 12, 1979, ERA issued an interim rule (44 FR 36002) and on August 1, 1980 a final rule (45 FR 53682) implementing the authority granted to the Department of Energy by Section 501 of FUA.

The final rule (10 CFR 504.4) establishes the procedures that ERA will follow in implementing its authorities under Section 501 of FUA. Section 504.4(b) of the final rule contains a description of the requirements that petitioners must meet in order to obtain approval of their system compliance plans.

Approval of a system compliance plan will allow a utility system to comply with natural gas use prohibitions contained in FUA applicable to existing powerplants on a systemwide basis rather than on an individual powerplant basis. Through utilization of the system compliance option, utilities which are now heavily dependent upon natural gas will be allowed to develop a plan to accomplish an orderly phased reduction in natural gas use.

Upon receipt of petitions for orders for the approval of system compliance plans, ERA performed an initial review of the plans as specified in 10 CFR 501.3(c). ERA determined that petitions submitted by the owners/operators of certain utility systems did not meet the minimum requirements specified in 10 CFR 504.4(b). As of October 31, 1980, 17 of these owners/operators have submitted information supplemental to their original petitions; and, upon preliminary review, ERA has determined that the following utility systems have now submitted information sufficient to meet the minimum requirements specified in 10 CFR 504.4(b).

Name of petitioner	Location
Public Utilities Board	Brownsville, Tex.
Southern Colorado Power, a division of Central Telephone and Utilities.	Pueblo, Colo.
City of Clarksdale	Clarksdale, Miss.
Fort Pierce Utilities Authority	Fort Pierce, Fla.
Gainesville Regional Utilities	Gainesville, Fla.
City of Grand Island, Nebraska Electric Department.	Grand Island, Neb.
City of Lakeland	Lakeland, Fla.
Lake Worth Utilities Authority	Lake Worth, Fla.
Lea County Electric Cooperative, Inc.	Lovington, N. Mex.
Mississippi Power & Light Co.	Jackson, Miss.
Montana-Dakota Utilities Co.	Bismarck, N. Dak.
Nebraska Public Power District	Columbus, Neb.
The Central Nebraska Public Power & Irrigation District.	Holdrege, Neb.
St. Joseph Light & Power Co.	St. Joseph, Mo.
Southwestern Public Service Co.	Amarillo, Tex.
City of Tallahassee, Fla.	Tallahassee, Fla.
City of Vero Beach Municipal Electric System.	Vero Beach, Fla.

Pursuant to 10 CFR 501.3(d), ERA hereby accepts the petitions for orders approving system compliance plans from the above listed petitioners and is,

with this **Federal Register** notice, announcing the commencement, in accordance with 10 CFR 501.63, of the administrative proceeding for these petitions.

Acceptance of these petitions does not constitute approval of the plans by ERA, nor does it foreclose ERA from requesting further information during the course of its further review of the petitions and the proceedings. Failure to provide additional information as requested could result in ERA withdrawing its acceptance of the petition or may ultimately result in the denial of the request for the approval of the plan.

ERA is accepting the petitions based upon the petitioners having met the minimum requirements of 10 CFR 504.4(b). In its preliminary review of the petitions ERA has not determined the appropriateness of any recommended terms and conditions set forth in the petitions nor the accuracy of any information, data or calculations provided as a part of the petitions. Such terms and conditions, contingencies, stipulations, etc. will be reviewed and analyzed by ERA during the course of the administrative proceedings and are available for public review during the public comment period.

The public comment period regarding these matters will remain open until February 1, 1981. During this time ERA will request any necessary additional information or allow the correction of deficiencies in the petitions as originally filed.

The public file, containing all documents relating to accepted petitions is available for inspection upon request at: Economic Regulatory Administration Room B-110, 2000 M Street, N.W., Washington, D.C., Monday-Friday, 8:00 a.m.-4:30 p.m.

Issued in Washington, D.C. on November 29, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-37731 Filed 12-4-80; 8:45 a.m.]

BILLING CODE 6450-01-M

[ERA Case No. 62004-9076-27, 28-77]

Public Works Commission of the City of Fayetteville, N.C. Powerplants No. 7 and 8

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Classification of Powerplants Owned by the Public Works Commission, City of Fayetteville, North Carolina as Existing Facilities; Powerplant and Industrial Fuel Use Act of 1978.

On June 28, 1979, the Public Works Commission, City of Fayetteville, North Carolina (PWC) requested that the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) classify two powerplants (Units No. 7 and 8) as existing facilities pursuant to 10 CFR 515.6 and the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act). Additional information was required by ERA and a revised request was submitted on November 9, 1979. On March 14, 1980, ERA published a summary of PWC's request for classification in the **Federal Register** (45 FR 16524) and requested comments by interested persons on or before April 4, 1980. ERA has not received any comment in response to that notice.

ERA has completed its analysis of PWC's request to classify Units No. 7 and 8 as existing facilities. PWC expended, in nonrecoverable outlays, more than 25 percent of the total projected project cost as of November 9, 1978, for Units No. 7 and 8 within the meaning of Section 515.6 of the Final Rule, and have demonstrated that a substantial financial penalty would result if the units were not classified as existing facilities.

ERA has classified PWC's Units No. 7 and 8 as existing facilities; subject to the provisions of Title III of FUA.

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, D.C. 20461, phone (202) 653-4055

Louis T. Krezanosky, Economic Regulatory Administration, Department of Energy, Room 3012 B, 2000 M Street NW., Washington, D.C. 20461, phone (202) 653-4208

James Renjilian, Office of General Counsel, Department of Energy, 1000 Independence Ave. SW., Room 6B-178, Washington, D.C. 20855, phone (202) 252-2967

A copy of ERA's Summary of Analysis dated September 24, 1980, is available for examination in the Office of Public Information, at the above address.

Issued in Washington, D.C.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-37750 Filed 12-4-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-4-FRL 1692-4]

Prevention of Significant Deterioration of Air Quality; Full Delegation of Authority to the State of Alabama

AGENCY: Environmental Protection Agency.

ACTION: Information Notice.

SUMMARY: Section 301 in conjuction with Sections 101 and 110 of the Clean Air Act authorizes the Administrator to delegate his authority to implement and enforce the Prevention of Significant Deterioration of Air Quality (PSD) regulations to any State which has submitted adequate implementation and enforcement procedures. The Alabama Air Pollution Control Commission submitted to the EPA Region IV office a request that EPA relinquish to them it's responsibility for implementing and enforcing the PSD program. After a thorough review of the request and information submitted, the Regional Administrator determined that such delegation was appropriate for the source categories and with the conditions set forth in the letter reproduced below.

EFFECTIVE DATE: May 29, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry Preston, Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: Alabama was granted partial delegation on February 17, 1977 for the technical and administrative portions of the PSD program. On March 10, 1980, EPA Region IV office received a letter from the Alabama Air Pollution Control Commission requesting full delegation of authority for the implementation and enforcement of the PSD program. After a thorough review of the request and information submitted, the Regional Administrator determined that for the source categories set forth in the following official letter to the Director of the Alabama Division of Air Pollution Control, delegation was appropriate subject to the conditions set forth therein. Therefore, pursuant to the authority delegated to her by the Administrator, the Regional Administrator formally notified the Director of the Alabama Division of Air Pollution Control by the following letter that she relinquishes full PSD regulatory authority to the State of Alabama.

Mr. James W. Cooper,

Director, Division of Air Pollution Control, Alabama Air Pollution Control

Commission, 645 South McDonough Street, Montgomery, Alabama

Dear Mr. Cooper: This is in response to your letter of March 7, 1980 requesting delegation of Federal authority to implement and enforce all portions of the Prevention of Significant Deterioration (PSD) program.

We have reviewed the pertinent laws of the State of Alabama and the rules and regulations thereof, and have determined that they provide an adequate and effective procedure for full implementation of PSD by the State of Alabama.

On February 17, 1977, the Environmental Protection Agency (EPA) delegated to the State authority to implement only the administrative and technical portions of the PSD program. The portion not delegated on February 17, 1977, was the authority to take final action (issue PSD permit) on a PSD application, and enforce the PSD permit conditions. The letter of March 7, 1979, requests authority to make a final determination whether construction should be approved, approved with conditions or disapproved pursuant to 40 CFR 52.21 (40 CFR 52.21 (r)) and to enforce the permit requirements.

We have reviewed the procedures for new source review of the State of Alabama and have determined that they provide an adequate and effective procedure for the implementation of all the portions of the PSD program by the State of Alabama. Therefore, pursuant to 40 CFR 52.01 and 52.21 (52.21(v)), we hereby delegate our authority for all portions of the Federal PSD program, as described in 40 CFR 52.21, to the State of Alabama as follows:

A. Responsibility for all sources located in the State of Alabama subject to review for the prevention of significant air quality deterioration promulgated in 40 CFR 52.21. The categories of new sources covered by the delegation are:

Any of the following stationary sources of air pollutants which emit, or have the potential to emit, 100 tons per year or more of any air pollutant regulated under the Clean Air Act (the "Act"):

Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydro-fluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300 thousand barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants; and notwithstanding the source sizes specified above, any source which emits or has the potential to emit, 250 tons per year or more of any pollutant regulated under the Act.

B. This delegation is based upon the following conditions:

1. Quarterly reports containing pertinent information relating to the status of sources subject to 40 CFR 52.21 (or other reports as required by the Regional Administrator) will be submitted to EPA by the State of Alabama as part of the existing quarterly reports normally submitted to EPA through program planning reporting.

2. Upon approval of the Regional Administrator of Region IV, the Director of the Division of Air Pollution Control may delegate his authority to implement all or part of PSD to any local air pollution control authority in the State when such authority has demonstrated to the State's and EPA's satisfaction that it has an equivalent or more stringent program in force.

3. If at any time there is a conflict between a State regulation and a Federal regulation (40 CFR 52.01 and 52.21), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to implement a Federal regulation that is more stringent than the applicable State regulation, the pertinent portion of the authority may be revoked.

4. If the Regional Administrator determines that the State procedure for implementing all the portions of PSD program is inadequate, or is not being effectively carried out, this authority may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Division of Air Pollution Control.

5. The State of Alabama will ensure, through its interstate intergovernmental cooperation procedures, that all potential source interactions along State boundaries are properly determined.

6. Enforcement of PSD in the State of Alabama will be the primary responsibility of the Division of Air Pollution Control. If the State determines that such enforcement is not feasible and so notifies EPA, or where the State acts in a manner inconsistent with the terms of this granted authority, EPA will exercise, its concurrent enforcement authority pursuant to Sections 113 and 167 or the Clean Air Act, as amended, with respect to sources within the State of Alabama subject to PSD requirements. In accordance with 40 CFR 52.21(s) and Sections 113 and 167 of the Clean Air Act, 42 U.S.C. 7413 and 7477, the Environmental Protection Agency reserves the right to commence an enforcement action against any entity in violation of Prevention of Significant Deterioration should the State of Alabama fail to take such an enforcement action or, in the opinion of EPA, fail to pursue a timely or appropriate enforcement action.

7. Acceptance of this delegation of presently promulgated PSD regulations does not commit the State of Alabama to request or enforce enforcement authority for future standards and requirements. A new request for enforcement authority will be required for any standards not included in paragraph A above.

The State and EPA will develop a system of communication sufficient to guarantee a program that includes the items described below:

A. Each agency is informed of the current compliance status of subject sources in the State of Alabama.

B. PSD reviews for which a Preliminary Determination has been submitted by the State to EPA, but a permit has not been issued, shall be completed using procedures of the partial delegation granted February 17, 1977.

C. Enforcement actions already initiated by EPA prior to this delegation of authority shall be completed by EPA.

The Division of Air Pollution Control shall send a copy of preliminary determinations and public comment notices required under paragraph (r) of 40 CFR 52.21 to the Air and Hazardous Materials Division, EPA Region IV at the same time the notice is forwarded for publication in the newspaper.

This delegation of authority should not be construed as a transfer of PSD responsibility under Section 110(a)(2)(J) of the Clean Air Act. As you are aware, such a transfer involves different procedures and considerations.

A notice announcing these actions will be published in the **Federal Register** in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to PSD by sources located in the State of Alabama will be reviewed and final permit approval action and enforcement will be taken by the Division of Air Pollution Control, Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36130.

Since this action is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within 10 days of the date of receipt of this letter, the State will be deemed to have accepted all of the terms as stated herein.

Sincerely yours,

Rebecca W. Hanmer,

Acting Regional Administrator.

Copies of the request for delegation of authority are available for public inspection at the Environmental Protection Agency, Region IV Office, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

Effective immediately, all reports required pursuant to PSD regulations should not be submitted to the EPA Region IV Office, but instead should be submitted to the State agency at the following address: Division of Air Pollution Control, Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama, 36130.

This notice is issued under the authority of Sections 101, 110, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, and 7601).

Dated: November 20, 1980.

John A. Littler,

Acting Regional Administrator.

[FR Doc. 80-37869 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

[ER-FRL-1694-7]

Availability of Environmental Impact Statements

AGENCY: Office of 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 November 24, 1980, to November 28, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from December 5, 1980, and will end on January 19, 1981. The 30-day review period for final EIS's as calculated from December 5, 1980, will end on January 5, 1981.

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 source:

Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209 (703) 558-8270.

SUMMARY OF NOTICE: This notice sets forth a list of EIS's filed with EPA during the week of November 24, 1980, to November 28, 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. All additional information relating to EIS's such as time extensions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental reports is also noticed under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 245-3006.

Dated: December 3, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

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

GYPSY MOTH SUPPRESSION AND REGULATORY PROGRAM: Regulatory, November 26: Proposed is a cooperative gypsy moth suppression and regulatory program. The program would affect Northeastern States that request financial assistance for the suppression of moth infestations and states where regulatory activities are implemented to eradicate existing infestations in locations isolated from the generally infested areas. The preferred alternatives involves chemical and biological insecticides and the gypsy moth pheromone. The cooperating agency is the animal and plant health inspection service (USDA-FS-DEIS-81-01). (EIS Order No. 800899.)

EXTENSION: The review period for the above EIS has been extended to January 23, 1981. (#800899)

WITHDRAWAL: Alaska national lands Withdrawal request, published FR September 5, 1980. (#800642 draft—has been officially withdrawn by the Forest Service.

Soil Conservation Service

Final

SPRING CREEK SUBWATERSHED PROTECTION: Sonoma County, Calif., November 24: Proposed is a watershed protection plan for the Spring Creek Subwatershed in Sonoma County, California. The project involves the installation of flood control measures consisting of the combination of a rectangular concrete channel, natural channel, shaped earthern channel, low profile drop structures and an underground conduit to divert peak flow. The alternatives consider: (1) No action, (2) a rectangular concrete channel, (3) underground conduit, and (4) combination of channels with underground conduit. Comments made by: USA, USDA, DOC, EPA, DOT, AHP, HHS, State, and local agencies, groups and individuals (EIS Order No. 800893.)

TEHACHAPI WATERSHED FLOOD PROTECTION PLAN: Kern County, Calif., November 24: Proposed is a flood protection plan for the Tehachapi Watershed located at the junction of the Sierra Nevada and Tehachapi mountain ranges in Kern County, California. The structural program will include: (1) Two floodwater retarding structures with diversion inlets at the mouths of antelope and blackburn canyon, (2) 0.2 miles of work on existing channels, and (3) 20.5 miles of planting and three watering facilities. The alternatives considered are: (1) No project, (2) land treatment only, (3) nonstructural flood prevention, and (4) ten alternative structural measures. Comments made by: EPA, USDA, COE, DOC, HEW, DOI, State and local agencies, individuals. (EIS Order No. 800894.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, 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

SEPULVEDA FLOOD CONTROL BASIN/ RECREATIONAL AREA: Los Angeles County, Calif., November 28: Proposed is development of a recreational area within Sepulveda Basin in Los Angeles County, California. The proposed plan would include: (1) 220 acres of informal park, (2) 20 acres for a tennis and swimming complex, (3) 50 acres of playfield area, (4) 120 acres for a recreational-rowing lake, and (5) a 60-acre arts park. Three build alternatives and no action are considered (Los Angeles District). (EIS Order No. 800905.)

SMITH ISLAND SHORE EROSION AND NAVIGATION PROJECT: Maryland and Virginia, November 26: Proposed is a shore erosion control and navigational improvement plan for Smith Island, Somerset County, Maryland. The alternatives condsider: (1) Shore erosion control for the Chesapeake Bay side of the Barrier Island west of Rhodes Point, (2) navigational access for Rhodes Point and Tylerton to the Chesapeake Bay, and (3) a combination of shore erosion control and navigation improvements (Baltimore District). (EIS Order No. 800898.)

EXTENSION: The review period for the above EIS has been extended to January 31, 1981. (No. 800898)

Revised Draft

SEQUIM BAY BOAT HAVEN, MARINA FACILITY: Clallam County, Wash., November 28: Proposed is the development of a marine facility at Pitship Point on the west shore of Sequim Bay, Clallam County, Wash. The preferred alternative would involve a wet morrage basin with 422 berths ranging in length from 24 to 50 feet, and dry storage sheds for 104 boats up to 24 feet in length. The alternatives consider options for: (1) Type of facility, (2) location, (3) design, and (4) disposal. The original draft EIS, No. 771204, filed 9-28-77 is replaced by revised draft EIS, No. 800902, filed 11-28-80 (Seattle District). (EIS Order No. 800902.)

Draft Supplement

TAYLORS BAYOU FLOOD PROTECTION (DS-1): Jefferson County, Tex., November 24: This statement supplements final EIS, No. 751246, filed 8-20-75 concerning a drainage and flood control project for Taylors Bayou in Jefferson County, Texas. Proposed is the implementation of a redesigned project using upland disposal areas, modified construction methods, incorporation of a wildlife mitigation plan and excavation by hydraulic

pipeline dredge (Galveston District). (EIS Order No. 800890.)

CIVIL AERONAUTICS BOARD

Contact: Mr. Arnold G. Konheim, Chief, Environmental Programs Division, Civil Aeronautics Board, Mail Code B-89, 1825 Connecticut Avenue, NW., Washington, D.C. 2028, (202) 673-5205.

Draft

JOHN WAYNE AIRPORT PERMISSIVE AUTHORIZATION: Orange County, Calif., November 28: Proposed is the granting of multiple permissive authorization for additional air services at John Wayne Airport in Orange County, California. Three alternatives are considered which include: (1) No action which would involve denial of all options, (2) open option which would grant unrestricted route authority to all fit, willing and able carriers, and (3) limited entry which grants nonstop authority to all applicants but involves specific noise restrictions (Docket No. 33237). (EIS Order No. 800901.)

EXTENSION: The review period for the above EIS has been extended to January 23, 1981. (#800901)

DEPARTMENT OF COMMERCE

Contact: Dr. Robert T. Miki, Acting Deputy Assistant Secretary for Regulatory Policy, Room 7614, Department of Commerce, Washington, D.C. 20230, (202) 377-2482.

Economic Development Administration

Final

WOONSOCKET INDUSTRIAL PARK-EAST, GRANT: Providence County, R.I., November 25: Proposed is the awarding of a grant for the construction of the Woonsocket Industrial Park-East in Woonsocket, Providence County, Rhode Island. The industrial park would involve the installation of utilities and the construction of a roadway. The alternatives consider: (1) Development of other industrial sites within the city, (2) development of regional industrial parks outside the city, and (3) alternative means of developing the East Woonsocket area for industrial use. Comments made by: DOE, HHS, EPA, COE, AHP, DOI, HUD, State and local agencies, businesses. (EIS Order No. 800895.)

EXTENSION: The review period for the above EIS has been extended to January 7, 1981. (#800895)

ENVIRONMENTAL PROTECTION AGENCY

Contact: RTP Library, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-2777.

Draft

ASPHALT ROOFING MANUFACTURING INDUSTRY, STANDARDS: Regulatory, November 28: Proposed are performance standards for the asphalt roofing manufacturing (ARM) industry. The alternatives considered would apply particulate control technology to different combinations of the four major facilities which may be located in ARM plants, oil refineries, or asphalt processing plants (EPA-450/3-80-021A). (EIS Order No. 800903.)

Final

AMMONIUM SULFATE MANUFACTURE, EMISSION STANDARDS: Regulatory, November 24: Proposed are emission standards for the manufacture of ammonium sulfate ("AS") which apply to the three major segments of the "AS" industry which include: (1) Caprolactam by-product plants, (2) synthetic plants, and (3) coke oven product plants. Emission standards would restrict particulate emissions from "AS" dryers to: 0.150 kilograms per megagram of AS production (0.30 pounds per ton), and 15 percent opacity. The control systems under consideration include: (1) Venturi scrubbers, and (2) fabric filters. Comments made by: State agencies and businesses. (EIS Order No. 800892.)

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.

Final

CREEKSIDE AND RIVER HILLS VILLAGES: Montgomery County, Tex., November 3: Proposed is the issuance of HUD home mortgage insurance for the River Hills Village and Creekside Village subdivisions in Montgomery County, Texas. When completed, these subdivisions, which encompass approximately 431.51 acres, are expected to consist of approximately 1,693 single-family dwelling units (HUD-RO6-EIS-80-7F). Comments made by: EPA, AHP, DOT, DOI, HEW, FEMA, State agencies. (EIS Order No. 800838.)

CORRECTION: The above EIS should have appeared in the report published in FR November 17, 1980. The review period began on November 14, 1980, and will terminate on December 15, 1980. (#800838)

Section 104(H)

The following are community development block grant statements prepared and circulated directly by applicants 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

RINCON POINT-SOUTH BEACH REDEVELOPMENT, CDBG: San Francisco County, Calif., November 26: Proposed is a redevelopment plan for the Rincon Point-South Beach area of the city and county of San Francisco, California. The plan provides for: (1) 2,600 new mixed income units, (2) two public parks encompassing 13.5 acres, (3) a boat harbor containing spaces for up to 400 boats, (4) the rehabilitation and adaptive re-use of several structures of historic merit, and (5) a hotel complex containing up to 800 rooms. Comments made by: EPA, COE, DOI, DOT, State and local agencies, businesses. (EIS Order No. 800897.)

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

WHITE RIVER DAM WATER DEVELOPMENT PROJECT, Uintah County, Utah, November 28: Proposed is the White River Dam Water Supply Development Project in Uintah County, Utah. The project would supply water for energy development including oil shale. The alternatives consider various water sources and no action. The cooperating agencies are the FWS, WPRS, GS, EPA, and the State of Utah (DES-80-74). (EIS Order No. 800906.)

EXTENSION: The review period for the above EIS has been extended to February 10, 1981. (#800906)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 (202) 426-4357.

Final

REHABILITATION ACT OF 1973, SECTION 504: Regulatory, November 25: Proposed are regulations implementing section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of handicap). The regulation generally requires accessibility for the handicapped of transportation systems receiving Federal financial assistance. Alternatives considered include: No requirements beyond those in effect before the regulation was issued, variations in compliance schedules and in the proportions of facilities that must be accessible to those who cannot use steps, and local option for cities to provide paratransit services in lieu of accessible transit. Comments made by: EPA, DOI, HUD, ICC, State and local agencies, groups, individuals and businesses. (EIS Order No. 800896.)

Federal Highway Administration

Draft

COALBANK SLOUGH BRIDGE REPLACEMENT: Coos County, Oreg., November 28: Proposed is the replacement of the Coalbank Slough Bridge located on the Oregon Coast Highway, city of Coos Bay, Coos County, Oregon. The alternatives consider various locations and fixtures, including fixed spans and bascule spans, and no actions. The cooperating agency is the State of Oregon (FHWA-OR-EIS-80-05-D). (EIS Order No. 800904.)

Draft

VA-460 UPGRADING AND RELOCATION: Buchanan and Dickenson Counties, Va., November 24: Proposed is the upgrading and relocation of VA-460 from the Virginia-Kentucky State line to the community of Deel in Buchanan and Dickenson Counties, Virginia. The total length of the project is 19 miles. Construction would begin on existing VA-80, and in five of the seven build alternatives tie into a newly constructed four lane section of VA-40 northwest of the Grundy CBD. Other features of the project include a bridge over Levisa fork and an

interchange with VA–83. The cooperating agency is the State of Virginia (FHWA–VA–EIS–80–02–D). (EIS Order No. 800891.)

Report

REPORT—I–15/I–91 4(F) EVALUATION: Jefferson County, Mont., November 28: This supplemental report provides current information concerning the use of 4(F) lands in conjunction with the improvement of I–15/I–91, in Jefferson County, Montana. The report relates to final EIS, No. 741088, filed 7–24–74 (FHWA–MT–EIS–04–F). (EIS Order No. 800900.)

[FR Doc. 80–37944 Filed 12–4–80; 8:45 am]

BILLING CODE 6560–37–M

[OPTS–59036A; TSH–FRL 1694–1]

Pesticides and Toxic Substances; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 23, 1980 EPA received an application for a test marketing exemption from the premanufacture notification requirements of section 5 of the Toxic Substances Control Act (TSCA) from International Minerals and Chemical Corporation. The Test Marketing Exemption (TME) number assigned to the substance was T–80–41. 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 has granted 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: Mary Cushmac, Chemical Control Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460, (202–426–3980).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purpose in the United States must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is one that is not on the Inventory of existing substance 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 exemption from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, 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 September 23, 1980 EPA received an application from International Minerals and Chemical Corporation for an exemption from the requirements of sections 5(a) and 5(b) of TSCA; to manufacture the new chemical substance identified by the generic name, amino alkanol salt (25 percent aqueous solution), for test marketing purposes.

A **Federal Register** notice published on October 20, 1980 (45 FR 69292) announced the receipt of the exemption application and requested comment on the appropriateness of granting the exemption. The Agency received no comment concerning the application.

The company stated in the application that the substance would be used as a pigment dispersant for latex paint and also as a polyelectrolyte for industrial cooling water. The submitter provided information on the volume of the substance to be produced during test marketing, the number of persons who will come in contact with the material, and the route and duration of such exposure. The company also submitted the following test data for the substance:

Acute oral toxocity (rat) $LD_{50} < 6$ g/kg
Primary eye irritation (rabbit) Non-irritating
Primary skin irritation (rabbit) Non-irritating
Primary skin corrosion (rabbit) Non-corrosive

Considering both the toxicity and exposure, the Agency has determined that the manufacture, production, and use of the substance, in the manner described in the test market application, will not present an unreasonable risk to the people who come into contact with it during manufacture, processing, or use. In addition, there are no environmental concerns with the release or disposal of this substance. Thus, the Agency has decided to grant a test marketing exemption to this company for the limited manufacture of the substance described in the test marketing exemption application.

At least 90 days prior to manufacturing the substance listed in the application for commercial purposes other than test marketing or in small quantities solely for research and development activities, 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 T–80–41 for use in the manner described in the test marketing exemption application.

Dated: November 26, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80–37804 Filed 12–4–80; 8:45 am]

BILLING CODE 6560–31–M

[A–6–FRL 1693.7]

Approval of PSD Permit to Cameron Iron Works, Inc.

Notice is hereby given that on October 22, 1980, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit, Number PSD–TX–233, to Cameron Iron Works for approval to expand the Cypress Plant Smelt shop with the addition of a vacuum arc degassing/vacuum oxygen decarburization (VAD/VOD) furnace located at 22501 U.S. Highway 290 in Houston, Harris County, Texas. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration regulations (40 CFR 52.21) applicable to the new facility subject to certain conditions stated in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of PSD–TX–233 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of todays's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270

Office of the City Secretary, City Hall, 900 Brazos, P.O. Box 1562, Houston, Texas 77001

Dated: November 18, 1980.

Fran Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 80-37795 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

[A-6-FRL 1693-4]

Approval of PSD Permit to Coastal States Petroleum Company

Notice is hereby given that on October 14, 1980, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit, Number PSD-TX-243, to the Coastal States Petroleum Company for approval to expand the existing petroleum refinery by 40,000 barrels per stream day located off Highway 37 at Corpus Christi, Nueces County, Texas. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration regulations (40 CFR 52.21) applicable to the new facility subject to certain conditions stated in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of PSD-TX-243 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270

Office of the City Secretary, City Hall, P.O. Box 9277, Corpus Christi, Texas 78408

Dated: November 18, 1980.

Fran Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 80-37796 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

[A-6-FRL 1693-2]

Approval of PSD Permit to Conoco, Incorporated

Notice is hereby given that on October 8, 1980, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit, Number PSD-LA-291, to Conoco for approval to construct a Linear Alkyl Benzene facility located at the Conoco complex off Houston River Road in Westlake, Calcasieu Parish, Louisiana. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration regulations (40 CFR 52.21) applicable to the new facility subject to certain conditions stated in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of PSD-LA-291 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270.

Office of the Mayor, City Hall, P.O. Box 635, Westlake, Louisiana 70669.

Dated: November 18, 1980.

Fran Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 80-37797 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

[A-6-FRC 1693-3]

Approval of PSD Permit to Hill Petroleum Company

Notice is hereby given that on October 9, 1980, the Environmental Protection Agency (EPA) issued an amended Prevention of Significant Deterioration (PSD) permit, number PSD-LA-140, to Hill Petroleum Company for approval to expand their crude topping facility located near Krotz Springs, Louisiana. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration regulations (40 CFR 52.21) applicable to the new facility subject to certain conditions stated in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of PSD-LA-140 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Curcuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270.

Dated: November 18, 1980.

Fran Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 80-37798 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

[A-6-FRL 1693-8]

Approval of PSD Permit to Nederland Processing Company

Notice is hereby given that on October 31, 1980, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit, Number PSD-TX-262, to Nederland Processing Company for approval to construct a new petroleum refinery to be located near the intersection of Highways 366 and 347 at Nederland, Jefferson County, Texas. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration regulations (40 CFR 52.21) applicable to the new facility subject to certain conditions stated in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of PSD-TX-262 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270.

Office of the City Secretary, City Hall, P.O. Box 967, Nederland, Texas 77627.

Dated: November 18, 1980.

Fran Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 80-37799 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

[A-6-FRL 1692-8]

Approval of PSD Permit to Oasis Pipeline Company

Notice is hereby given that on October 6, 1980, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit, Number PSD-TX-334, to Oasis Pipeline for approval to modify the Winchester Compressor Station

located approximately 11 miles south-southwest of Giddings of FM 448 in Fayette County, Texas. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration regulations (40 CFR 52.21) applicable to the new facility subject to certain conditions stated in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of PSD–TX–334 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270.

Office of the City Secretary, City Hall, P.O. Box 187, La Grange, Texas 78945.

Dated: November 18, 1980.

Fran Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 80-37800 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

[A-6 FRL 16 93-1]

Approval of PSD Permit to Olinkraft, Incorporated

Notice is herey given that on October 8, 1980, the Environmental Protection Agency (EPA) issued an amended Prevention of Significant Deterioration (PSD) permit, number PSD–LA–37, to Olinkraft for approval to modify their pulp and paper mill located in West Monroe. Ouachita Parish, Louisiana. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration regulations (40 CFR 52.21) applicable to the new facility subject to certain conditions stated in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of PSD–LA–37 is available *only* by the filing a petition for review on the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies if the permit are available for public inspection upon request at the following locations.

Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270.

Dated: November 18, 1980.

Fran Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 80-37801 Filed 12-3-80; 8:45 am]

BILLING CODE 6560-32-M

[A-6-FRL 1693-5]

Approval of PSD Permit to Petraco Valley Oil and Refining Company

Notice is hereby given that on October 15, 1980, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit, Number PSD–TX–236, to the Petraco Valley Oil and Refining Company for approval to construct a 100,000 barrel per day refinery located on Texas Highway 48, between the existing Gulf Energy and Union Carbide facilities. Brownsville, Cameron County, Texas. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration regulations (40 CFR 52.21) applicable to the new facility subject to certain conditions stated in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of PSD–TX–236 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270.

Office of the City Secretary, City Hall, P.O. Box 944, Brownsville, Texas 78520.

Dated: November 18, 1980.

Fran Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 80-37802 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

[A-6-FRL 1693-6]

Approval of PSD Permit to Phillips Petroleum Company

Notice is hereby given that on October 23, 1980, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit, Number PSD-TX–102, to Phillips Petroleum Company for approval to modify the petroleum refinery located on State Highway 119, 3 miles northeast of Borger, Hutchinson County, Texas. This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration regulations (40 CFR 52.21) applicable to the new facility subject to certain conditions stated in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of PSD-TX–102 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270

Office of the City Secretary, City Hall, P.O. Box 5250, Borger, Texas 79007.

Dated: November 18, 1980.

Fran Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 80-37803 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. B-6]

AM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: December 3, 1980.

Cut-off date: January 12, 1981.

Notice is hereby given that the following applications have been accepted for filing. Because they are in conflict with applications previously accepted for filing and listed as subject to cut-off dates for conflicting applications, no application which would be in conflict with these applications will be accepted for filing.

Petitions to deny these applications must be on file with the Commission not later than the close of business on January 12, 1981.

Minor amendments to these applications, and to the applications they are in conflict with, may be filed as a matter of right not later than the close of business on January 12, 1981. Amendments filed pursuant to this

notice are subject to the provisions of § 73.3525(b) of the Commission's Rules.

BP-781205AG—New, Burnside, Kentucky; Glen J. Goldenberg; Req: 910 kHz, 500 W, DA, Day

BP-800627AA—KSPO, Spokane, Washington; Radio Spokane, Inc.; Has: 1230 kHz, 250 W, 1 kW-LS, U; Req: 1600 kHz, 5 kW, DA-2, U

BP-801031AF—New, Redlands, California; William Gittler, Manuel Cervantes, and Bernard J. Campbell d.b.a. G. C. and C. Enterprises; Req: 1410 kHz, 500 W, 5 kW-LS, DA-N, U (Mutually exclusive with renewal application for KCAL, Redlands)

BP-801103AG—New, San Gabriel, California; Life Broadcasting Company, Inc.; Req: 1430 kHz, 5 kW, DA-2, U (Mutually exclusive with renewal application for KALI, San Gabriel)

Federal Communications Commission.

William JH. Tricarico,

Secretary.

[FR Doc. 80-37734 Filed 12-4-80; 8:45 am]

BILLING CODE 8712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Establishment of FEMA Advisory Board

The following is the notice of establishment of a new FEMA Advisory Committee.

George Jett,

December 1, 1980.

General Counsel.

Establishment of FEMA Advisory Board

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (Supp. II, 1972) and Office of Management and Budget Circular A-63 of March 1974, and after consultation with the General Services Administration, the Director of FEMA has determined that the establishment of the FEMA Advisory Board is in the public interest in connection with the performance of duties imposed on the agency by law.

As the principal advisory body to the Director, the objective of the Board is to provide him with independent advice on the adequacy of FEMA plans and programs in areas of civil emergencies, such as: Natural or man-made disasters; mobilization of resources and stabilization of the economy during crisis or war; civil defense and continuity-of-government measures during conflict; essential post-conflict resources management for national reconstitution; and other civil emergency roles assigned by Acts of Congress or by Executive Order.

The Board will draw on the expertise of its members and other sources (e.g., FEMA emergency plans and programs, analyses, interrelated activities of other Agencies) to provide advice and make recommendations to the Director. Besides its evaluating role on FEMA high priority civil preparedness programs, the Board will provide advice concerning mission priorities, methodology for addressing objectives, training-education exercise programs, and new concepts related to emergency preparedness.

The Board will function solely as an advisory body, and will comply fully with the provisions of the Federal Advisory Committee Act (the "Act").

The Board shall consist of 20 members to be appointed by the Director to assure a balanced representation of experts in areas of natural disasters and national security, such as: physical scientists and engineers, sociologists, political scientists, and economic experts drawn from universities, industry, nonprofit organizations, etc. The members will be appointed for 2-year terms and serve at the discretion of the Director.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act, 15 days from the date of the publication of this notice.

Interested persons are invited to submit comments regarding the establishment of the FEMA Advisory Board. Such comments, as well as any inquiries, may be addressed to the Rules Docket Clerk, Room, 801, 1725—I Street, NW, Washington, DC 20472.

Dated: July 17, 1980.

John W. Macy, Jr.,

Director

[FR Doc. 80-37758 Filed 12-4-80; 8:45 am]

BILLING CODE 6718-01-M

FEMA Advisory Board Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act announcement is made of the following committee meeting.

Name: Federal Emergency Management Agency Advisory Board.

Date of Meeting: December 18, 1980.

Place: Federal Emergency Management Agency National Operations Center, 1725 I Street, NW., Washington, D.C. 20472.

Time: 9:00 a.m. to 5:00 p.m.

Purpose and proposed agenda: Reports from FEMA program heads, from officials of the National Security Council, discussions with respect to internal modus operandi of Board.

Parts of the meeting will be open to the public and parts will be closed. The Director has determined that the afternoon session and part of the morning session should be closed because disclosure is likely to disclose matters that are specifically authorized to be kept secret in the interest of the national defense or foreign policy, and are properly classified pursuant to Executive Order.

For that part of the meeting open to the public, there are approximately 20 seats available on a first come first serve basis. Members of the general public who plan to attend the meeting should contact Mr. Dalimil Kybal, Room 1022, Premier Building, 1725 I Street NW., Washington, D.C. (202) 653-7880.

Dated: December 2, 1980.

George Jett,

General Counsel.

[FR Doc. 80-37759 Filed 12-4-80; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before December 25, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-639-5.

Filing party: William E. Emick, Jr., Deputy City Attorney, Office of the City

Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-639-5, between the City of Long Beach and Atlantic Richfield Co. (Richfield), modifies the parties' basic agreement which provides for the lease of certain lands located on Pier E in the Harbor District of the City of Long Beach for the purpose of constructing and operating a marine terminal. The purpose of the modification is to delete from the lease a portion of the premises, with a proportionate reduction in rent, and to alter Richfield's obligation to remove certain tenant-installed improvements.

Agreements Nos.: T-3934 and T-3934-1.

Filing party: Randall V. Adams, Traffic, Port of Palm Beach, P.O. Box 9935, Riviera Beach, Florida 33404.

Summary: Agreement No. T-3934, between Port of Palm Beach and Florida Molasses Exchange, Inc., provides for the exclusive use of Parcels 1 and 2 located at Riviera Beach, Florida. The lease shall continue in effect until March 31, 1993, with renewal options. The premises will be used for the operation of storage facilities for molasses and liquid cattle feed. The parties agree to an annual rental charge of $7,225.35 on Parcel 1 and $6,156.72 on Parcel 2, with an increase every three years based upon the cost of living index. The parties further agree to applicable taxes and current tariff charges, guaranteed minimum wharfage, and other terms provided therein.

Agreement No.: T-3934-1 amends the basic agreement by changing the annual rental charge on Parcel 1 from $7,225.35 to $7,326.33.

Agreement No.: T-3935.

Filing party: Marion L. Moore, Jr., Traffic Manager, South Carolina State Ports Authority, P.O. Box 817, Charleston, South Carolina 29402.

Summary: Agreement No. T-3935, between South Carolina State Ports Authority (Authority) and Puerto Rico Maritime Shipping Authority (PRMSA), provides for PRMSA's lease of 8.3 acres of land in the Authority's Remount Road Container Storage Area together with a storage area measuring 100' by 30' for two RO/RO ramps at Charleston, S.C. The term of the agreement is 10 years with options to extend for two additional consecutive 5-year terms. PRMSA will provide structures and utilities for its business purposes. PRMSA shall have an option to relocate the lease to a "Subsequent Relocation Area" of 9.5 acres in Berkley and Charleston counties, when the facilities thereon are completed. PRMSA will pay to the Authority a rental of $5,348.61 per month, and $200 for storage of the RO/RO ramp. In the event that PRMSA decides to relocate to the relocation area, compensation will be as set forth in detail in the agreement. PRMSA shall pay wharfage and dockage to the Authority as provided in the Authority's applicable tariff, subject to a guaranteed annual minimum of 150,000 short tons of wharfage.

Agreement No.: 10041-8.

Filing party: Hopewell H. Darneille, III, Esquire, Sullivan & Beauregard, 1800 M Street NW., Washington, D.C. 20036.

Summary: Agreement No. 10041-8 proposes to modify the basic U.S. Atlantic/Peru Pooling Agreement to: (1) enlarge the list of cargoes excluded from the pool to include "chemicals or fertilizers in bulk, in containers, also refrigerated cargo in containers, and liquid cargo in tank containers"; (2) increase the minimum number of annual sailings from 15 to 19 sailings; (3) add a new article which permits the parties to meet quarterly to revise the minimum sailings to meet the demands of the trade; (4) provide for annual or semiannual review meetings of pool principals; (5) change the interest rate on late settlement of pool balance from 8 percent to the prime rate of the Marine Midland Bank of New York City in effect on the 31st day after issue of pool accountant's statement; (6) add a new article which provides for a 5 percent penalty grace so that penalty payments would not be applicable unless either line's earnings exceed 55 percent of the total pool revenue; (7) delete article 9 which defines carrier's rights and duties; (8) provide for the rewriting of the article providing for arbitration for compliance with the new Constitution of the Republic of Peru as well as U.S. laws and customs; (9) extend the term to be effective through December 31, 1982; and, (10) add a new article which provides that any period of the extension of the agreement expiring December 31, 1980, will be combined for accounting purposes and computation of pool shares under this agreement for the Pool year 1981.

Agreement No.: 10407.

Filing party: Roy G. Bowman, Sullivan & Beauregard, 1800 M Street NW., Washington, D.C. 20036.

Summary: Agreement No. 10407, among Farrell Lines Incorporated, Delta Steamship Lines, Inc., and Nigerian National Shipping Line, Ltd., provides for the discussion, consideration, and exchange of data related to matters of interest to carriers in the Nigerian/U.S. trade. The agreement does not obligate any party to exchange information, or limit the right of any party to make changes in its present rates, rules, and practices. Any carrier by water operating a U.S. flag vessel, a Nigerian-flag vessel, or a third-flag vessel in commercial common carrier service between ports in Nigeria and the U.S. may become a party to the agreement. The agreement, upon Commission approval, will remain in effect for a period of 2 years.

By Order of the Federal Maritime Commission.

Dated: December 2, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-37845 Filed 12-4-80; 8:45 am]

BILLING CODE 6730-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals (FCC, NRC)

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on November 26, 1980 (NRC), and December 1, 1980 (FCC). 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 receipts.

The notice includes the title of each 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 FCC and NRC requests 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 requests, comments (in triplicate) must be received on or before December 23, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Federal Communications Commission

The FCC requests clearance of a new Form 572, Temporary Permit to Operate a Business Radio Station. Form 572 is required by §§ 1.922, 1.925, 2.302, 90.119, 90.159 and 90.437 of the Commission's Rules. This form will enable eligible applicants in the Business Radio Service to become temporarily licensed and begin operating qualified radio systems prior to the receipt of a permanent

authorization from the Commission. Form 572 will be used in conjunction with FCC Form 400, Application for Radio Station Authorization in Private Radio Services. The FCC estimates that respondent burden will average 10 minutes per response and that approximately 37,000 applications will be received annually.

Nuclear Regulatory Commission

The NRC requests clearance of revisions to 10 CFR Part 50, Domestic Licensing of Production and Utilization Facilities, consisting of a new Appendix R—Fire Protection Program for Nuclear Power Facilities. The regulations in new Appendix R will require that each nuclear power plant have a manual firefighting brigade and that each brigade consist of at least five persons on each shift. Minimum levels of training for each brigade member are also prescribed. Appendix R contains reporting requirements in Section III.I.3.d which require that drills shall be critiqued at three-year intervals by qualified individiuals independent of the licensee's staff and a copy of the report from such individuals shall be submitted to NRC for evaluation. Section III.I.4 requires that records of training provided to each fire brigade member, including drill critiques, shall be maintained for at least three years to ensure that each member receives training in all parts of the training program. The NRC estimates that respondents will number approximately 10 and that burden will average 24 hours per respondent for Section III.I.3.d and 3 hours for recordkeeping for each brigade member's training of a firefighting unit under Section III.I.4.

John M. Lovelady,

Senior Group Director, Regulatory Reports Review.

[FR Doc. 80-37822 Filed 12-4-80; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPR 37 Federal Procurement Supplement 9]

Companies Not in Compliance With the Voluntary Wage and Price Standards

November 20, 1980.

1. *Purpose.* This supplement provides a complete relisting of all companies that have been determined to be, and are now, in noncompliance with the Voluntary Wage and Price Standards formulated under Executive Order 12092.

2. *Expiration date.* This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. *Substance.* Attachment A is the October 29, 1980, letter from the Administrator, Office of Federal Procurement Policy, to GAS and DOD. The letter includes the list of companies that are in noncompliance with the Voluntary Wage and Price Standards. Ths list supersedes the list previously published in GSA Bulletin FPR 37, Supplement 8.

4. *Cancellation.* This bulletin cancels GSA Bulletin FPR 37, Supplement 8, dated August 28, 1980.

Gerald McBride,

Assistant Administrator for Acquisition Policy.

[GSA Bulletin FPR 37, Supplement 9, Attachment A]

November 20, 1980.

Executive Office of the President, Office of Management and Budget, Washington, D.C.

Office of Federal Procurement Policy

October 29, 1980.

Memorandum to: The Secretary of Defense, the Administrator of General Services.

From: Karen Hastie Williams, Administrator, Office of Federal Procurement Policy.

Subject: Companies not in compliance with the Voluntary Wage and Price Standards.

The Council on Wage and Price Stability has determined that the following companies are not in compliance with the Voluntary Wage and Price Standards formulated pursuant to Executive Order 12092 [43 **Federal Register** 51375]. The list is current as of October 15, 1980.

Company	Original date listed
Cement Division compliance unit of Ideal Basic Industries Inc., P.O. Box 8789, Denver, Colorado 80201, DUNS Number 00-706-1385.	June 15, 1979.
Northwestern Steel and Wire Co., 121 Wallace Street, Sterling, Illinois 61081, DUNS Number 00-526-3157.	July 24, 1979.
Mason Contractors of DuPage County, P.O. Box 129, Mount Prospect, Illinois 60056, DUNS Number 99-106-2472.	July 24, 1979.
American Hoechst Corporation, Route 202-206 North, Somerville, New Jersey 08876, DUNS Number 04-578-7991.	Oct. 23, 1979.
SCOA Industries, Inc. (excluding foreign subsidiaries), 155 East Broad Street, Columbus, Ohio 43215, DUNS Number 00-790-2208.	Oct. 23, 1979.
National Electrical Contractors Association (Oregon-Columbia Chapter), 201 S.W. Arthur Street, Portland, Oregon 97201, DUNS Number 99-106-2480.	Oct. 23, 1979.
The Eureka Company, 1201 East Bell Street, Bloomington, Illinois 61701, DUNS Number 00-116-3823.	Nov. 27, 1979.
Portland Association of Plumbing Heating and Cooling Contractors (two noncomplying agreements), 0612 S.W. Idaho, Portland, Oregon 97201, DUNS Number 06-509-2300.	Nov. 27, 1979.
Sheetmetal Association, Inc., c/o 3434 S.W. Water Avenue, Portland, Oregon 97201, DUNS Number 99-106-2498.	Nov. 27, 1979.
San Diego Contracting Lathers Association, 7855 Ostrow Street, San Diego, CA 92111, DUNS Number 99-106-2506.	Nov. 27, 1979.
"All other" compliance unit of Gifford-Hill & Company, Inc. (which includes all products exclusive of transportation, irrigation and metal building products), 8435 Stimmons Freeway, P.O. Box 47127, Dallas, Texas 75247, DUNS Number 00-792-6496.	Dec. 27, 1979.
Boston Distributors, a compliance unit of Cook United, Inc., 16501 Rockside Road, Cleveland, Ohio 44137, DUNS Number 09-449-7245.	Jan. 21, 1980.
National Gypsum Company, 4100 First International Building, Dallas, Texas 75270, DUNS Number 00-138-2431.	Jan. 21, 1980.
Crown Central Petroleum Corp., One North Charles, P.O. Box 1168, Baltimore, Maryland 21203, DUNS Number 00-308-2401.	Mar. 25, 1980.
Gust K. Newberg Company & Assoc. (out of compliance only in Will County and vicinity, Illinois), 2040 North Ashland Avenue, Chicago Illinois 60614, DUNS Number 00-693-1869.	Mar. 25, 1980.
Mid-America Regional Bargaining Association, 228 North LaSalle Street, Chicago, Illinois 60601, DUNS Number 99-106-2514.	Mar. 25, 1980.
Contractors Association of Will and Grundy Counties, 254½ Rusy Street, Joliet, Illinois 60435, DUNS Number 99-106-2522.	Mar. 25, 1980.
Residential Construction Employers Council, 1010 Jorie Boulevard, Suite 112, Oak Brook, Illinois 60521, DUNS Number 99-106-2530.	Mar. 25, 1980.
Koch Fuels, Inc., a compliance unit of Koch Refining Company, P.O. Box 31, Gloucester City, N.J. 08030, DUNS Number 07-057-9404.	Apr. 2, 1980.
Church's Fried Chicken, Inc., P.O. Box BH001, San Antonio, Texas 78284, DUNS Number 02-701-7417.	Apr. 2, 1980.
Monolith Portland Cement Co., P.O. Box 3303, Terminal Annex, Suite 201, Glendale, California 91202, DUNS Number 00-825-5580.	Apr. 18, 1980.
Dundee Cement Company, P.O. Box 122, Dundee, Michigan 48131, DUNS Number 00-503-8500.	May 2, 1980.
Santee Portland Cement Co., S.C. Highway 453, Holly Hill, South Carolina, DUNS Number 00-336-8891.	May 2, 1980.
Hyatt Hotels compliance unit of Hyatt Corporation (which includes all hotels owned or managed by the Hyatt Corporation), 9701 W. Higgins Road, Rosemont, Illinois 60018, DUNS Number 04-738-6677.	May 20, 1980.
Air Conditioning and Refrigeration Contractors Association, 870 Market Street, San Francisco, California 94102, DUNS Number 99-106-2548.	May 30, 1980.
Industrial Contractors (UMIC, Inc.), P.O. Box 1005, Tiburon, California 94920, DUNS Number 99-106-2555.	May 30, 1980.
Plumbing Heating Piping Employers Council, 36 Tiburon Blvd., Mill Valley, California 94941, DUNS Number 99-106-2563.	May 30, 1980.
Residential Plumbing and Mechanical Contractors of North California, 1545 B Palos Verdes Mall, Walnut Creek, California 94596, DUNS Number 99-106-2571.	May 30, 1980.
Santa Clara Valley Contractors Association, 400 Reed Street, Santa Clara, California 95050, DUNS Number 99-106-2589.	May 30, 1980.
Burlington Northern Air Freight, Inc., a compliance unit of Burlington Northern, Inc., 4350 Von Karman Avenue, New Port Beach, California 92660, DUNS Number 05-802-0496.	July 2, 1980.

Company	Original date listed
Hotels Division and Hotel-Casinos Division, compliance units of Hilton Hotels Corporation, 9880 Wilshire Blvd., Beverly Hills, California 90210, DUNS Number 00-693-0531 (limited to Hotels Division and Hotel-Casinos Division).	July 10, 1980.
Murphy Oil, Domestic Marketing and Refining Division, a compliance unit of Murphy Oil Corporation (excluding foreign subsidiaries), 200 Jefferson Avenue, El Dorado, Arkansas 71730, DUNS Number 00-805-3712.	July 15, 1980.
Harris-Teeter Supermarkets, Inc., a compliance unit of Ruddick Corporation, 4017 Chesapeake Drive, P.O. Box 33129, Charlotte, N.C. 28233, DUNS Number 99-106-9287.	Aug. 13, 1980.
Circle K Corporation, 4500 South 40th Street, Phoenix, Arizona, DUNS Number 00-894-8143.	Aug. 13, 1980.
Louisville Cement Company, 501 South Second Street, Louisville, Kentucky 40201, DUNS Number 00-636-6678.	Sept. 17, 1980.
Brown-Forman Distillers Corporation, 850 Dixie Highway, Louisville, Kentucky 40201, DUNS Number 00-837-9812.	Sept. 17, 1980.
Dairymen's Creamery Association, Inc., 520 Albany, Caldwell, Idaho 83605, DUNS Number 04-526-5865.	Oct. 15, 1980.
Agricultural Chemicals Group compliance unit of W.R. Grace and Company, 100 North Main Street, Memphis, Tennessee 38103, DUNS Number 04-487-7918.	Oct. 15, 1980.
American Petrofina, Inc., 8350 North Central Expressway, Dallas, Texas 75221, DUNS Number 00-132-9077 (excluding crude oil exploration and development).	Oct. 15, 1980.

This supersedes the previous list promulgated by OFPP memorandum of October 9, 1980. Changes to that list include the addition of three companies. There are no deletions.

Pursuant to the terms of Office of Federal Procurement Policy Letter 78-6 dated December 27, 1978, I request that you publish this information in a Defense Acquisition Circular and Federal Procurement Regulations Bulletin.

[FR Doc. 80-37794 Filed 12-4-80; 8:45 am]

BILLING CODE 6560-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 76-0274; DEST 5798]

Absorbable Starch Sponges; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Withdrawal Approval.

SUMMARY: This notice withdraws approval of the new drug application (NDA 8-655) for Solusponge Strips and Cones containing absorbable starch sponge. The basis of the withdrawal is that the products lack substantial evidence of effectiveness for their labeled indications. The products, which were previously used as hemostatic adjuncts and aids in dental and oral surgery, are no longer marketed.

EFFECTIVE DATE: December 15, 1980.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 5798 and directed to the Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David T. Read, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the **Federal Register** of July 12, 1977 (42 FR 35893), the Director of the Bureau of Drugs proposed to issue and order withdrawing approval of the new drug application for Solusponge Strips and Cones containing absorbable starch sponge (NDA 8-655). The proposed order was based on the lack of substantial evidence of effectiveness. In response to the notice, Ormont Drug & Chemical Co., Inc., requested a hearing.

Ormont has since withdrawn its hearing request. Approval of the new drug application for the following products is now being withdrawn.

NDA 8-655; Solusponge Strips and Cones containing absorbable starch sponge; formerly marketed by Panray Division, Ormont Drug & Chemical Co., Inc., 520 S. Dean St., Englewood, NJ 07631.

The Director of the Bureau of Drugs, under the Federal Food, Drug, and Cosmestic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the products, evaluated together with the evidence available to him when the application was approve, there is a lack of substantial evidence that the products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 8-655 and all amendments and supplements applying thereto is withdrawn effective December 15, 1980. Shipment in interstate commerce of the above products will then be unlawful.

Dated November 24, 1980.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 80-37606 Filed 12-4-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80F-0455]

Albany International Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that Albany International Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 7-(2H-Naphtho[1,2-d]triazol-2-yl)-3-phenyl-coumarin as an optical brightener in polyester fiber intended to contact dry food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)), notice is given that a petition (FAP 1B3535) has been filed by Albany International Corp., P.O. Box 1062, Buffalo, N.Y. 14240, proposing that the food additive regulations be amended to provide for the safe use of 7-(2H-Naphtho[1,2-d]triazol-2-yl)-3-phenyl-coumarin as an optical brightener in polyester fiber intended to contact dry food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: November 20, 1980.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 80-37609 Filed 12-4-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80F-0445]

Witco Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces that Witco Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(methylene-*p-tert*-butylphenoxy) poly(oxyethylene), poly(methylene-*p*-nonylephenoxy) poly(oxyethlene), and α-tridecylhydroxy, mixture of dihydrogen phosphate and monohydrogen phosphate esters as a lubricant with incidental food-contact use.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)), notice is given that a petition (FAP OB3526) has been filed by Witco Chemical Corp., 3230 Brookfield St., Houston, TX 77045, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of poly(methylene-*p-tert* butylphenoxy) poly(oxyehtylene), poly (methylene-*p*-nonylphenoxy) poly(oxyethylene), and a -tridecylhydroxy, mixture of dihydrogen phosphate and monohydrogen phosphate esters as a lubricant with incidental food-contact use.

The potential environmental impact statement of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: November 24, 1980.

Taylor M. Quinn,

Acting Director, Bureau of Foods.

[FR Doc. 80-37607 Filed 12-4-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 78N-0100]

Viral Vaccines and Immune Globulins; Opportunity for Hearing on Intent To Revoke Certain U.S. Licenses

Correction

In FR Doc. 80-30523 appearing on page 65675 in the issue for Friday, October 3, 1980, make the following correction:

On page 65676, center column, three lines from the top of the page the cite "21 CFR 601.7(A)" should have read "21 CFR 601.7(a)".

BILLING CODE: 1505-01-M

Ophthalmic Device Section; Meeting Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The date of the meeting of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel announced by notice in the **Federal Register** of November 14, 1980 (45 FR 75325) for December 18 and 19, 1980, has been changed. The meeting will be held on December 17 and 18, 1980, at 9 a.m., in the Auditorium, 200 Independence Ave. SW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Max W. Talbott, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7538.

Dated: December 2, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-37746 Filed 12-4-80; 8:45 am]

BILLING CODE 4110-03-M

Health Resources Administration

Application Announcement for Allied Health Traineeship Grants for Advanced Training–Training Institutes (Short-Term)

The Bureau of Health Professions, Health Resources Administration, announces that competitive applications for Allied Health Traineeship Grants for Advanced Training–Training Institutes (Short-Term) will be accepted under the authority of section 797 of the Public Health Service Act, as amended.

Section 797 of the Public Health Service Act, as amended, authorizes the Secretary to award grants to public or nonprofit private entities for the purpose of providing support to allied health professions personnel, who are pursuing advanced training to increase their preparedness to teach in academic and/or clinical training programs for allied health personnel, or serve in leadership and administrative or supervisory positions in the field of allied health.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (A–13), Bureau of Health Professions, Health Resources Administration, Center Building, Room 4–27, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone: (301) 436–7360

Questions concerning the programmatic aspects of these grants should be directed to:

Mr. Charles Munn, Division of Associated Health Professions, Bureau of Health Professions, Health Resources Administration, Center Building, Room 5–41, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone: (301) 436–6800

To be considered for fiscal year 1981 funding, applications must be received by the Grants Management Officer, Bureau of Health Professions, at the above address no later than February 13, 1981. Approximately $500,000 is expected to be available for these grants.

This program is listed at 13.966 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to review by State and areawide clearinghouses under the procedures in Office of Management and Budget Circular No. A–95.

Dated: December 1, 1980.

Karen Davis,

Administrator.

[FR Doc. 80-37737 Filed 12-4-80; 8:45 am]

BILLING CODE 4110-83-M

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

Correction

In FR Doc. 80–36315 appearing on page 77372 in the issue of Friday, November 21, 1980, the **Effective Date** in column one now reading "November 21, 1981" should read "November 21, 1980."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[Federal Lease No. C–078049]

Pending Decision To Approve an Underground Mining and Reclamation Plan, GEX Colorado Incorporated—Cameo No. 3 Mine, Mesa County, Colo.

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice of Pending Decision to Approve Underground Mining and Reclamation Plan with Stipulations.

SUMMARY: Pursuant to § 1506.6 of Title 40 and § 211.5 of Title 30, Code of the Federal Regulations, notice is hereby

given that the Region V, Office of Surface Mining Reclamation and Enforcement (OSM) has completed a technical and environmental review of GEX Colorado Incorporated's Cameo #3 mining and reclamation plan and has recommended to the Department that the plan be approved with stipulations. Notice of availability of GEX Colorado Incorporated's application to be published in the **Federal Register** on November 20, 1980.

Location of Lands to be Affected by Mining:

Applicant—GEX Colorado Incorporated
Mine Name—Cameo #3
State—Colorado
County—Mesa
Township, Range—Southeast ¼ of Section 28, Range 28 West, Township 10 South of the 16th Prime meridian, Office of Surface Mining Reference No. CO–0020

The Cameo #3 mining complex is located 12 miles east of Grand Junction, Colorado along highway I–70 adjacent to the Colorado River. Current production at the facility is approximately 800,000 tons. The complex employs 275 people. Mining began at this site in early 1977.

The proposed mining plan modification involves construction of a coal waste rock and processing waste pile that would disturb 23.5 acres within the 117 acre permit area. The construction and reclamation of this 1.5 million cubic yard pile would take approximately 24 months.

The U.S. Bureau of Land Management evaluated the impacts of the Cameo complex in its final regional and site-specific environmental impact statement "West-Central Colorado Coal Environmental Statement" (1979). OSM has prepared a technical and environmental analysis and an environmental assessment. From its analyses, OSM has determined that no significant impacts would occur that have not already been evaluated in the previous EIS.

The purpose of this notice is to inform the public that based on OSM staff analysis of the mining and reclamation plan and the reviews of other State and Federal agencies, the Regional Director, Region V, OSM, is recommending approval with stipulations of GEX Colorado Incorporated's mining and reclamation plan for the Cameo #3 Mine. Any person having an interest that may be adversely affected by the recommended approval may request, in writing, a public meeting on the proposed decision.

Amendments to 30 CFR 701.11 and 741.11 postpone the effective date for implementation of the permanent Regulatory Program for Federal lands until the date of approval of the Colorado State program or until implementation of a Federal program for a State (See 44 FR 77440–47, December 31, 1979). Departmental action on GEX Colorado Incorporated's mining and reclamation plan at this time would not relieve the applicant of the obligation to file a permit application or appropriate changes not later than two months after the effective date of the final Colorado program approval or Federal program. Upon receipt of this application, OSM will review the application pursuant to 30 CFR Chapter VII.

The Assistant Secretary for Energy and Mineral's decision will be based on the recommendations of OSM, the U.S. Geological Survey, and any public comments received on or before December 26, 1980.

DATE: All requests for a public meeting must be made by December 26, 1980. No decision on the plan will be made by the Assistant Secretary, Energy and Minerals, prior to the expiration of the 20-day period.

ADDRESSES: The technical analysis, environmental assessment, and proposed stipulations are available on request from the Office of Surface Mining, Region V. Any comments on the proposed approval should be submitted to the Regional Director, Region V, Office of Surface Mining, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Keith Kirk or John Hardaway, Office of Surface Mining, Region V, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202.

Dated: December 1, 1980.

Walter Heine,

Director, Office of Surface Mining.

[FR Doc. 80-37757 Filed 12-4-80; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Notice of 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: BASF Aktiengesellschaft, 6700 Ludwigshafen/Rhein, West Germany
2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices: (a) BASF Wyandotte Corporation, 100 Cherry Hill Road, Parsippany, New Jersey 07054
(b) Badische Corporation, P.O. Box Drawer D, Williamsburg, Virginia 23185
(c) BASF Canada Incorporated, P.O. Box 430, Station St. Laurent, Quebec, Canada H4L 4V8
(d) Fritzches, Dodge & Olcott, 76th 9th Avenue, New York 10011
1. Parent corporation and address of principal office: Border Steel Rolling Mills, Inc., P.O. Box 12843, El Paso, Texas 79912
2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal office: Metal Processing, Inc., P.O. Box 12649, El Paso, Texas 79912
1. Parent corporation and address of principal office: Dakota Bake–N–Serv, Inc., Airport Road, Box 668, Jamestown, ND 58401
2. Wholly-owned subsidiaries which will participate in the operations, and address of its principal office: Sunnydale Distributing, Inc., 450 Hart-Albin Building, Billings, Montana 59103
1. The name and address of the parent corporation is: Gelco Corporation, a Minnesota corporation, One Gelco Drive, Eden Prairie, Minnesota 55344
2. Wholly-owned subsidiaries to be served: a. AAA Truck Rental Co., a California corporation, 1500 S. Greenwood, Montebello, California 90640
b. AAA Truck and Trailer Sales, Inc., a California corporation, 1500 S. Greenwood, Montebello, California 90640
c. Continental Distributors, Inc., a Missouri corporation, 12115 Lackland Road, St. Louis, Missouri 63141
d. Cralex, Inc., a Delaware corporation, One Gelco Drive, Eden Prairie, Minnesota 55344
e. CTI International, Inc., a Delaware corporation, 445 Hamilton Avenue, White Plaines, New York 10601
f. Dalton Equipment Company, Inc., a Calilfornia corporation, 20th & Broadway, Sacramento, California 95807
g. Eagals Equipment Company, a California corporation, 335 N. Sutter Street, P.O. Box 960, Stockton, California 95201
h. Exportair, Inc., a New York corporation, Time & Life Building, 1271 Avenue of the Americas, New York, New York
i. Feld Redevelopment Corporation, a Missouri corporation, 12115 Lackland Road, St. Louis, Missouri 63141
j. Feld Truck Leasing Division, Gelco Corporation, a Minnesota corporation,

2115 Lackland Road, St. Louis, Missouri 63141
k. Feld Truck Leasing of Nebraska, Inc., a Nebraska corporation, 7850 I Street, Omaha, Nebraska 68127
l. Gelco Equipment Leasing Company of California, Inc., a California corporation, One Gelco Drive, Eden Prairie, Minnesota 55344
m. Gelco Rail Services Company, a Minnesota corporation, 130 Montgomery Street, San Francisco, California 94104
n. International Couriers Corporation, a Minnesota corporation, One Gelco Drive, Eden Prairie, Minnesota 55344
o. Leasing International, Inc., a Georgia corporation, 3242 Peachtree Road NE, Atlanta, Georgia 30305
p. Oser Leasing Company, Inc., an Indiana corporation, 5250 Old Maumee Road, Fort Wayne, Indiana 46801
q. Pacific Purchasing Agency, Inc., a Delaware corporation, 445 Hamilton Avenue, White Plaines, New York 10601
r. Transport Pool Corporation, a Delaware corporation Two Bala-Cynwyd Plaza, Bala-Cynwyd, Pennsylvania 19004
s. Travel Whirl, Inc., a Maryland corporation, Heaver Plaza Building, 1301 York Road, Lutherville, Maryland 21093
t. Traveletter Corporation, a Minnesota corporation, One Gelco Drive, Eden Prairie, Minnesota 55344

1. Parent corporation and address of principal office: Genuine Parts Company, 2999 Circle 75 Parkway, Atlanta, Georgia 30339 and Genuine Parts Company d.b.a.: NAPA Distribution Center, Albany, New York; NAPA Distribution Center, Albuquerque, New Mexico; NAPA Distribution Center, Atlanta, Georgia; NAPA Distribution Center, Birmingham, Alabama; NAPA Distribution Center, Boston, Massachusetts; NAPA Distribution Center, Buffalo, New York; NAPA Distribution Center, Carrollton, Ohio; NAPA Distribution Center, Charleston, West Virginia; NAPA Distribution Center, Charlotte, North Carolina; NAPA Distribution Center, Cincinnati, Ohio; NAPA Distribution Center, Cleveland, Ohio; NAPA Distribution Center, Columbus, Ohio; NAPA Distribution Center, Middletown, Connecticut; NAPA Distribution Center, Denver, Colorado; NAPA Distribution Center, Fresno, California; NAPA Distribution Center, High Point, North Carolina; NAPA Distribution Center, Jackson, Mississippi; NAPA Distribution Center, Jacksonville, Florida; NAPA Distribution Center, Little Rock, Arkansas; NAPA Distribution Center, Los Angeles, California; NAPA Distribution Center, Memphis, Tennessee; NAPA Distribution Center, Miami, Florida; NAPA Distribution Center, Minneapolis, Minnesota; NAPA Distribution Center, Morgan Hill, California; NAPA Distribution Center, New Orleans, Louisiana; NAPA Distribution Center, South Plainfield, New Jersey; NAPA Distribution Center, Omaha, Nebraska; NAPA Distribution Center, Owatonna, Minnesota; NAPA Distribution Center, Phoenix, Arizona; NAPA Distribution Center, Portland, Oregon; NAPA Distribution Center, Richmond, Virginia; NAPA Distribution Center, Roanoke, Virginia; NAPA Distribution Center, Sacramento, California; NAPA Distribution Center, Salt Lake City, Utah; NAPA Distribution Center, San Diego, California; NAPA Distribution Center, Seattle, Washington; NAPA Distribution Center, Spokane, Washington; NAPA Distribution Center, Sylvester, Georgia; NAPA Distribution Center, Syracuse, New York; NAPA Distribution Center, Tampa, Florida; The Automotive Parts Co., Charleston, West Virginia; The Automotive Parts Company, Cincinnati, Ohio; The Automotive Parts Company, Columbus, Ohio; Beck & Gregg Industries, Atlanta, Georgia; S. B. Hubbard, Jacksonville, Florida; Clarke Siviter, St. Petersburg, Florida; Rayloc-Atlanta, Atlanta, Georgia; Rayloc-Hancock, Hancock, Maryland; Rayloc-Memphis, Memphis, Tennessee; Rayloc-Payson, Payson, Utah; Rayloc-Portland, Portland, Oregon; Rayloc-R.M.D.S., Atlanta, Georgia; Rogers-Mustang
2. List the wholly-owned subsidiaries that will participate in the operations and the address of their respective principal offices: (a) Bearing Specialty Company, 185 Berry Street, San Francisco, CA 94107
(b) Michigan Bearing Co., 1700 East Avis Drive, Madison Heights, MI 48071
(c) Motion Industries, Inc., 741 Alton Road, Birmingham, AL 35210
(d) Odell Hardware Company, 1010 Scott Avenue, Greensboro, NC 27403
(e) S. P. Richards Company, 1130 Bankhead Avenue NW., Atlanta, GA 30318

1. Parent corporation and address of principal office: Kama Corporation, 666 Dietrich Avenue, Hazelton, PA 18201
2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices: Kola Transport, Inc., 666 Dietrich Avenue, Hazelton, PA 18201

1. Parent corporation and address of principal office: Lowe's Companies, Inc., P.O. Box 1111, Hwy. 268 East, North Wilkesboro, N.C. 28656
2. Wholly-owned subsidiaries which will participate in the operations: Lowe's of Alabama, Inc.; Pittsview Forest Products, Inc.; Lowe's of Arkansas, Inc.; Lowe's of Delaware, Inc.; Lowe's of Florida, Inc.; Lowe's of Georgia, Inc.; Lowe's of Illinois, Inc.; Lowe's of Indiana, Inc.; Lowe's of Kentucky, Inc.; Lowe's of Louisiana, Inc.; Lowe's of Maryland, Inc.; Lowe's of Mississippi, Inc.; Lowe's of Hernando, Inc.; Lowe's Companies, Inc.; Lowe's of North Carolina, Inc.; Lowe's Investment Corporation; Sterling Advertising, Ltd.; Lowe's of Ohio, Inc.; Lowe's of Pennsylvania, Inc.; Lowe's of South Carolina, Inc.; Lowe's of Texas, Inc.; Lowe's of Tennessee, Inc.; Lowe's of Virginia, Inc.; Lowe's of West Virginia, Inc.

1. The parent corporation is: Norlin Industries, Inc., Westchester One, White Plains, New York 10601
2. The wholly-owned subsidiary which will participate in the operations is: Story & Clark Piano Company, 100 Fulton Street, Grand Haven, Michigan 49417

1. Parent Corporation and address of principal office: Rhinechem Corporation, 425 Park Avenue, New York, NY 10022
2. Wholly owned subsidiaries which will participate in the operations, and addresses of their respective principal offices: (a) Cutter Laboratories, Inc., 2200 Powell Street, Emeryville, CA 94608
(b) Miles Laboratories, Inc., 1127 Myrtle Street, P.O. Box 40, Elkhart, IN 46515
(c) Mobay Chemical Corporation, Penn Lincoln Parkway West, Pittsburgh, PA 15205
(d) Harmon Colors Corporation, P.O. Box 419, Hawthorne, NJ 07507
(e) Haarmann & Reimer Corporation, U.S. Highway 22, P.O. Box 175, Springfield, NJ 07081
(f) Helena Chemical Company, 3200 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137

1. Parent corporation and address of principal office: H. J. Scheirich Co., 250 Ottawa Avenue, Lousiville, Kentucky 40209, P.O. Box 21037, Louisville, Kentucky 40221
2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices: (a) Bluegrass Kitchens & Home Supply, Inc., 2409 Plantside Drive, Bluegrass Industrial Park, Jeffersontown, Kentucky 40299
(b) Thorn Distributing Company, Division of H. J. Scheirich Co., 209

South 13th Street, Birmingham, Alabama 35233
(c) Landmark Kitchen Distributors, Inc., 3428 Dalworth, Arlington, Texas 76011
(d) Southwest Kitchen Distributors, Inc., 4018 Westhollow Parkway, Houston, Texas 77082, P.O. Box 308, Alief, Texas 77411
1. Parent Corporation: Southeastern Steel Container Company
2. Wholly-owned subsidiaries which will participate in the operations: (a) Southeastern Plastic Container Co., P.O. Box 309, 6055 Airline Rd., Arlington, TN 38002
(b) Southeastern Steel Container Co., Box 10646, 3055 35th Ave. North, Birmingham, AL 35202
(c) Self Mfg. Co., Inc., Box 117, Mary Taylor Rd., Trussville, AL 35173
(d) Kresge & Assoc., Box 334, Trussville, AL 35173
(e) Thompson Can Company, Box 34259, 13401 Denton Drive, Dallas, TX 75234
(f) Southwestern Steel Co., Box 15687, 3301 S. Lamar Street, Dallas, TX 75215
(g) K & H Trucking, Inc., Box 15687, 3301 So. Lamar Street, Dallas, TX 75215
1. Parent corporation and address of principal office: Southern Pacific Company, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105
2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices: (a) Southern Pacific Development Company; (b) Golden Empire Investment Corporation; (c) Santa Barbara-Cabrillo Corporation; (d) Southern Pacific Industrial Development Company; (e) Southern Pacific Land Company; (f) Southern Pacific Transportation Company; (g) Sunset Insurance Company; (h) Evergreen Freight Car Corporation; (i) Holton Inter-Urban Railway Company; (j) Northwestern Pacific Railroad Company; (k) Pacific Fruit Express Company; (l) Southern Pacific Warehouse Company; (m) Visalia Electric Railroad Company Southern Pacific Building One Market Plaza San Francisco, CA 94105;
(n) Southern Pacific Pipe Lines, Inc.; (o) Black Mesa Pipeline, Inc.; (p) Mescalero Pipeline, Inc.; (q) Los Angeles Union Terminal, Inc., Pacific Electric Building, 610 South Main Street, Los Angeles, CA 90014;
(r) Ticor, 6300 Wilshire Boulevard, Los Angeles, CA 90048; (s) Pacific Motor Transport Company; (t) Pacific Motor Trucking Company (u) Louis Heller, Inc.; (v) Southern Pacific Air Freight, Inc. (w) Southern Pacific Transport Company of Texas and Louisiana, 1766 El Camino Real, Burlingame, CA 94010; (x) Bankers Leasing Corporation, 2655 Campus Drive, San Mateo, CA; (y) Southern Pacific Communications Company; (z) Video Microwave, Inc.
(aa) Sunset Communications Company, One Adrian Court, Burlingame, CA 94080;
(bb) Bravo Oil Company, 913 Franklin Avenue, Houston, TX 77001
(cc) Southern Pacific International, Inc.
(dd) Southern Pacific Marine Transport, Inc., One California Street, Suite 2760, San Francisco, CA 94111
(ee) Cascade Microfilm Systems, Inc., 416 Occidental Avenue S., Seattle, WA 98104
(ff) Chas. P. Young Company Chicago, Inc., 320 South Jefferson, Chicago, IL 60606
(gg) Chas. P. Young Company, 75 Varick Street, New York, NY 10013
(hh) Fidelity Printing Company, Inc., 1801 Walker Avenue, Houston, TX 77003
(ii) Jefferies Banknote Company
(jj) Jeffries Lithograph Company
(kk) Jeffries Printing Company, 1330 West Pico, Los Angeles, CA 90015
1. Parent corporation and address of principal office: R. T. Vanderbilt Company, Inc., 30 Winfield Street, Norwalk, Connecticut 06855
2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principle offices: (a) Vanderbilt Chemical Corporation, Murray, Kentucky 42071
(b) Vanderbilt Chemical Corporation, Bethel, Connecticut 06801
(c) Vanderbilt Mineral Corporation, Norwalk, Connecticut 06851
(d) Dixie Clay Company, Bath, South Carolina 29816
(e) Gouverneur Talc Company Inc., Gouverneur, N.Y. 13642
(f) Standard Mineral Company Inc., Robbins, North Carolina 27325
(g) Western Talc Company Inc., Beatty, Nevada 89003
(h) Vanderbilt Export Corporation, Norwalk, Connecticut 06855
1. Parent corporation and address of principal office: WWG Industries Inc., P.O. Box 162, Rome, Georgia 30161
2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principle offices: (a) Commercial Broadloom Inc., P.O. Box 162, Rome, Georgia 30161
(b) Viking Carpets Inc., P.O. Box 162, Rome, Georgia 30161
(c) Robertson Carpets Inc., P.O. Box 162, Rome, Georgia 30161
(d) Commercial Affiliates, Inc., P.O. Box 162, Rome, Georgia 30161
(e) Commercial Carpet Inc., P.O. Box 162, Rome, Georgia 30161
(f) Normandy Carpets Inc., P.O. Box 162, Rome, Georgia 30161

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-37767 Filed 12-4-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-34F)]

Chesapeake and Ohio Railway Company; Abandonment Near North Muskegon in Muskegon County, MI; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided December 1, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen,* 360 I.C.C. 91 (1979), the present and future public convenience and necessity permit the abandonment by the Chesapeake and Ohio Railway Company of its line of railroad known as: North Horn Spur, between Valuation Stations 0+00 and 53+10, at or near North Muskegon, a total distance of 1.01 miles, in Muskegon County, MI. A certificate of public convenience and necessity permitting abandonment was issued to the Chesapeake and Ohio Railway Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington DC 20423, no later than December 15, 1980. The offer, as filed shall contain information required pursuant to § 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment

shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich

Secretary.

[FR Doc. 80-37769 Filed 12-4-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29520]

Lake Superior & Ishpeming Railroad Company—Purchase of Chicago and North Western Transportation Company; Exemption

The Lake Superior & Ishpeming Railroad Company (LS&I) has notified the Commission that it will participate in a transaction that comes within the exempt classification described at 49 CFR 1111.5(c)(1). LS&I will acquire from the Chicago and North Western Transportation Company (C&NW) its 50% ownership of the line from Coops Spur to Duncan, MI, a distance of 4.3 miles. This line is presently jointly owned, 50% by LS&I and 50% by C&NW. C&NW obtained Commission approval to abandon its 50% joint ownership of the line in AB-1 (Sub-No. 100F) which was issued September 5, 1980.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-37770 Filed 12-4-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-18F)]

Union Pacific Railroad Company; Abandonment Near Lyman and Hartman in Scotts Bluff County, NE; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided December 1, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen,* 360 I.C.C. 91 (1979), the present and future public convenience and necessity permit the abandonment by the Union Pacific Railroad Company of a portion of a line of railroad known as the Lyman Branch extending from railroad milepost 0.0 near Lyman to milepost 5.04 near Hartman, a distance of 5.04 miles in Scotts Bluff County, NE. A certificate of public convenience and necessity permitting the abandonment was issued to the Union Pacific Railroad Company. Since no investigation was instituted, the requirements of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than December 15, 1980. The offer, as filed, shall contain information required pursuant to Section 1121.38(a)(2)(3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-37768 Filed 12-4-80; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 364]

Permanent Authority Decisions-Notice

Correction

In FR Doc. 80-34746 appearing at page 74086 in the issue for Friday, November 7, 1980, make the following correction:

On page 74087, in the third column, in the paragraph "MC50682F", application of Kedashaw, Inc., in the first line the MC number should be corrected to read "MC150682F".

BILLING CODE 1505-01-M

BOARD FOR INTERNATIONAL BROADCASTING

Schedule for Awarding a Senior Executive Service Bonus

AGENCY: Board for International Broadcasting.

ACTION: Notice.

SUMMARY: Notice is hereby given of the schedule for awarding a Senior Executive Service (SES) bonus.

DATE: December 2, 1980.

FOR FURTHER INFORMATION CONTACT:

Dr. John A. Gronouski, Chairman, Board for International Broadcasting, 1030 15th Street, NW., Suite 430, Washington, D.C. 20005, telephone (512) 471-4962, extension 233.

Schedule for Awarding a Senior Executive Service Bonus

Office of Personnel Management guidelines require that each agency publish a notice in the **Federal Register** of the agency's schedule for awarding SES bonuses at least 14 days prior to the date on which the awards will be paid. The Board for International Broadcasting at its meeting of October 17, 1980 recommended that an SES bonus for the performance rating cycle of October 1, 1979 through September 30, 1980 be awarded. The bonus is scheduled for payment no later than December 31, 1980.

Board for International Broadcasting.

Arthur D. Levin,

Budget and Administrative Officer.

[FR Doc. 80-37765 Filed 12-4-80; 8:45 am]

BILLING CODE 6155-01-M

DEPARTMENT OF JUSTICE

Attorney General

Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

Notice is hereby given that the Coordinating Council on Juvenile Justice and Delinquency Prevention will meet tuesday, December 16, 1980, in the 13th Floor Conference Room, 633 Indiana Avenue, NW., Washington, D.C., 20531. The meeting will be open to the public.

The meeting will begin at 9:00 a.m. Agenda items include: an update on the progress of the Annual Analysis and Evaluation comprehensive survey; and a review of past action items.

For further information contact Mr. James C. Shine, Executive Assistant and Special Counsel, Office of Juvenile Justice and Delinquency Prevention, Department of Justice 633 Indiana Avenue, NW., Washington, D.C., 20531.

Ira M. Schwartz,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 80-37870 Filed 12-4-80; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans,

or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 USC 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same areas.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Administrator, Employment and Training Administration, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 1st day of December 1980.

Luis Sepulveda,

Acting Director, Office of Program Services.

Applications Received During the Week Ending Dec. 5, 1980

Name of applicant and location of enterprise	Principal product or activity
Washington Mills Company, Mayodan, North Carolina.	Manufacture of sport shirts and men & boys knit underwear.
Preston Dairy Products, Burkburnett, Texas.	Processes milk and orange juice, manufactures plastic jugs, and operates convenience (Dairy and Gasoline) stores.
Wellborn Cabinet, Inc., Ashland, Alabama.	Manufacture of kitchen cabinets.
Alma Enterprises, Inc., Alma, Michigan.	Manufacture of miscellaneous plastic products, outdoor aluminum advertising and planter pottery.
Barrentine Manufacturing Company, Inc., Greenwood, Mississippi.	Manufacture of farm equipment.

[FR Doc. 80-37851 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-30-M

Office of the Secretary

Business Research Advisory Council; Renewal

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, I have determined that the establishment of the Business Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics on technical economic and statistical matters, in the analysis of the Bureau's statistics, and on the broader aspects of its program from an informed business point of view; and provide a realitic and timely two-way communciations' structure between business users and reporters of basic economic statistics and a major governmental statistics-producing unit.

Council membership is selected to assure a technically competent group of economists, statisticians and industrial relations experts who represent a cross section of American business and industry. The members serve in their individual capacities, not as representatives of their companies or their organizations.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act by December 22, 1980.

Interested persons are invited to submit comments regarding renewal of the Business Research Advisory Council. Such comments should be addressed to:

Kenneth Van Auken, Executive Secretary, Bureau of Labor Statistics, Department of Labor, Room 4844, GAO Building, Fourth and G Streets NW., Washington, D.C. 20212, phone: 202-523-1559

Dated: November 26, 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-37828 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-24-M

Labor Research Advisory Council; Renewal

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, I have determined that the establishment of the Labor Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics regarding the statistical and analytical work of the Bureau of Labor Statistics, providing perspectives on these programs in relation to the needs of the labor unions and their members.

Council membership and participation in the Council and its committees are broadly representative of the union organizations in the United States. These include representation from organizations of all sizes of membership, with national coverage which reflects the geographical, industrial, and occupational sectors of the economy.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act by December 22, 1980.

Interested persons are invited to submit comments regarding renewal of the Labor Research Advisory Council. Such comments should be addressed to:

Joseph Goldberg, Executive Secretary, Bureau of Labor Statistics, Department of Labor, Room 4844, GAO Building, Fourth and G Streets NW., Washington, D.C. 20212, phone: 202-523-1247

Dated: November 26, 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-37827 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-24-M

[TA-W-7968]

Barry Steel Corp.; Affirmative Determination Regarding Application for Reconsideration

On October 15, 1980, a company official 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 Barry Steel Corporation's Lyndon Avenue Plant, Detroit, Michigan. The determination was published in the **Federal Register** on June 13, 1980, (45 FR 40255/6).

The application for reconsideration claimed that the Department's denial of trade adjustment assistance was based on the determination that workers of Barry Steel are engaged in providing the service of slitting steel coils and do not produce an article.

The applicant states that workers at Barry Steel are involved in the manufacture of cold rolled strip steel which is a recognized manufacturing process within the steel industry. The applicant further states that the "manufacturing process begins with a purchased raw material of hot rolled steel, initial slitting, continuous pickling, cold reduction in a four-high reversing mill, annealing, temper rolling in a two- or four-high reversing mill, final slitting, packaging, and shipment and sale of the finished product to the customer".

Conclusion

After review of the application, I conclude that the applicant's claim is 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 28th day of November 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-37836 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-28-M

Columbian Chemicals Co., et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period November 24–28, 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 criterion has not been met.

TA-W-9593 & 10,725; Columbian Chemicals Co.; Elola, LA and Cranbury, NJ

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of carbon black are negligible.

TA-W-9459; RWC, Inc., Bay City, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of automated assembly and welding equipment did not increase as required for certification.

TA-W-9226; Starfoam Products, Inc., Troy, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of automobile stamping dies are negligible.

TA-W-8658; Chicago Bridge and Iron Co., Nuclear Div., Memphis, TN

Investigation revealed that criterion (3) has not been met. U.S. imports of metal tanks and vessels are negligible.

TA-W-11,083; M & R Timber (formerly Merrill and Ring, Inc.) Port Angeles, WA

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of softwood lumber did not increase as required for certification.

TA-W-8583; Dixie Yarn, Inc., Candlewick Div., Roanoke, AL

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of yarn did not increase as required for certification.

TA-W-8425; Marsa Sportswear Corp., Brooklyn, NY

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-10,655; Wyandotte Paint Products Co., Troy, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of automotive coatings are negligible.

TA-W-8364; Austin-Asta, Ltd., Middle Village, NY

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8117; Dana Corp., Perfect Circle Div., Rushville, IN

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8025; Dura Corp., Adrian, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-10,382; W.E. Plechaty Co., Cleveland, OH

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8606; Cadillac Malleable Iron Co., Cadillac, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9567; General Motors Corp., Detroit Diesel Allison Div., Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9568; General Motors Corp., Diesel Equipment Div., Grand Rapids, MI

Investigation revealed that criterion (3) has not been met. Separations of workers from the subject facility were short term in nature.

TA-W-10,653; Spinnerin Yarn Co., Inc., South Hackensack, NJ

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of yarn and craft kits are negligible.

TA-W-8059; Dana Corp., Havana Metal Casting Plant, Havana, IL

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8140; Hayes-Albion Corp., Tiffin, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increaced imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8879; Korelle Industries, Inc., Avenel, NJ

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-10,031; Cornelius Buick-Pontiac-GMC, Inc., Fairfield, CA

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-9385 & 9619; Colt Industries, Inc., Holley Carburetor Div., Paris, TN and Warren, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9209; Lewfer Drug Products, Long Island City, NY

Investigation revealed that criterion (3) has not been met. Separations of workers resulted from a fire which occurred at the plant in January 1980.

TA-W-11,031; Keystone Coke Corp., Conshohocken, PA

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal and coke did not increase as required for certification.

TA-W-10,401; IRC Fibers Co., Painesville, OH

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of tire cord are negligible.

TA-W-9200; Molded Fiber Glass Tray Co., Linesville, PA

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9191; E. I. Dupont De Nemours and Co., Edgemoor, DE

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of titanium dioxide did not increase as required for certification.

TA-W-8940; GTI, Warren, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8831; RCO Engineering, Inc., Roseville, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8727; The Timken Co., Bucyrus, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8642; Herd Seeder Co., Inc., Logansport, IN

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and workers separations at the firm.

TA-W-8406; Stant, Corp., Connersville, IN

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8337; Jay Enn Corp., Troy, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8331; American Model and Pattern, Inc., St. Clair Shores, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8192; H. M. Gammon Manufacturing Corp., New York, NY

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7862 & 7862A; RPM Products, Inc., Croswell and Roseville, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

Affirmative Determinations

TA-W-8890; Monroe Auto Equipment Co., Conzad, NE

A certification was issued applicable to all workers at the subject firm separated on or after June 3, 1979.

TA–W–9177; Prairie Mfg. Co., East Prairie, MO

A certification was issued covering all workers of the firm separated on or after January 3, 1980.

TA–W–8929; P & R Shake, Forks, WA

A certification was issued covering all workers of the firm separated on or after June 2, 1979 and before January 31, 1980.

TA–W–8158; Domino Juniors, Inc., New York, NY

A certification was issued covering all workers of the firm separated on or after July 14, 1979.

TA–W–9664; Arrowhead Chrysler-Dodge, Inc., Pontiac, MI

A certification was issued covering all workers of the firm separated on or after July 10, 1979 and before October 1, 1980.

TA–W–11,260; Northwest Cedar, Inc., Sedro Wooley, WA

A certification was issued covering all workers of the firm separated on or after October 1, 1979.

TA–W–10,343; Broadway Chrysler-Plymouth Inc., Jenkintown, PA

A certification was issued covering all workers of the firm separated on or after January 1, 1980 and before October 1, 1980.

TA–W–10,550; Jules T. Garfall, Inc., Johnstown, NY

A certification was issued covering all workers of the firm separated on or after August 25, 1979.

TA–W–7876 & 7877; Ronco, Inc., Plain City and Delaware, OH

A certification was issued covering all workers of the firm separated on or after July 31, 1979.

I hereby certify that the aforementioned determinations were issued during the period November 24–28, 1980. Copies of these determinations are available for inspection in Room S–5314, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: December 1, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80–37838 Filed 12–4–80; 8:45 am]

BILLING CODE 4510–28–M

[TA–W–10, 186–10, 211; 10, 218; 10, 223–10, 237]

Fishermen's Marketing Association, Inc., California, Oregon, and Washington; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 18, 1980 in response to a petition received on July 18, 1980 which was filed by the Fishermen's Marketing Association, Inc. on behalf of workers at the firms listed in the attachment. The workers process fish.

The petitioner requested in a letter that the petition be withdrawn. On the basis of this request, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 25th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Attachment

TA–W Number, Company, and Location

10,186, California Shellfish Co., Ft. Bragg, CA.
10,187, California Shellfish Co., Cresent City, CA.
10,188, Depoe Bay Fish Co., Newport, OR.
10,189, Humbolt Seafood Co., Eureka, CA.
10,190, Meredith Fish Co., Ft. Bragg, CA.
10,191, Meredith Fish Co., Eureka, CA.
10,192, Meredith Fish Co., Bodega Bay, CA.
10,193, Point St. George Fisheries, Santa Rosa, CA.
10,194, Tide Wharfs Co., Bodega Bay, CA.
10,195, A. Puccini and Sons, Ft. Bragg, CA.
10,196, Astoria Seafoods Co., Astoria, OR.
10,197, Charter International Oil, Charleston, OR.
10,198, Grader Fish Co., Ft. Bragg, CA.
10,199, M. Alioto Seafoods, Harbor Fisheries, San Francisco, CA.
10,200, N. Beach Star, Inc., San Francisco, CA.
10,201, Ocean Foods of Astoria, Inc., Astoria, OR.
10,202, Standard Fisheries, Inc., San Francisco, CA.
10,203, Tarantino Fish Co., San Francisco, CA.
10,204, Caito Fisheries, Inc., Ft. Bragg, CA.
10,205, California Shell Fish Co., San Francisco, CA.
10,206, Cresent Fisheries, Cresent City, CA.
10,207, Hallmark Fisheries Co., Charleston, OR.
10,208, J. Griffin and Co., Coos Bay, OR.
10,209, Lucas Wharf Inc., Bodega Bay, CA.
10,210, Tom Lazio Fish, Inc., Eureka, CA.
10,211, Western California Fish Co., San Francisco, CA.
10,218, M. Alioto Fish Co., San Francisco, CA.
10,223, A. Paladini Fish Co., San Francisco, CA.
10,224, Eureka Fisheries, Inc., Ft. Bragg, CA.
10,225, Ice and Cold Storage, Eureka, CA.
10,226, Ilwaco Fish Co., Ilwaco, WA.
10,227, Meredith Fish Co., Sacramento, CA.
10,228, Meredith Fish Co., Brookings, OR.
10,229, Nor-Cal Seafoods, Eureka, CA.
10,230, Schnaubelt Fisheries Co., Ft. Bragg, CA.
10,231, Seal Rock Fish Co., Santa Rosa, CA.
10,232, Alaska Packers Assoc., Inc., Hammond, OR.
10,233, Alaska Packers Assoc., Inc., Charleston, OR.
10,234, Alaska Packers Assoc., Inc., Newport, OR.
10,235, Eureka Fisheries, Cresent City, CA.
10,236, Eureka Fisheries, Fields Landing, CA.
10,237, Eureka Fisheries, Harbor, OR.

[FR Doc. 80–37834 Filed 12–4–80; 8:45 am]

BILLING CODE 4510–28–M

[TA–W–11,551]

General Electric Co.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 1980 in response to a worker petition received on October 27, 1980 which was filed on behalf of workers and former workers of the Memphis, Tennessee facility of the General Electric Company. Workers produce miniature automotive lamps.

On July 7, 1980, an investigation (TA–W–9241) was initiated on behalf of the same group of workers as TA–W–11,551.

Since the identical group of workers is the subject of the ongoing investigation TA–W–9241, a new investigation would serve no purpose. Consequently, the investigation (TA–W–11,551) has been terminated.

Signed at Washington, D.C. this 26th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80–37830 Filed 12–4–80; 8:45 am]

BILLING CODE 4510–28–M

[TA–W–9026; 9246–48; 9250–51; 10,733; 10,735; 10,743–44; 10,748; 10,757; 10,761; 10,763; 10,766; 10,771–72; 10,775; 10,778; 10,781; 10,797; 10,799; 10,801–14; 10,818–44; 10,846–48]

General Motors Corp.; Amended Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued Certifications of Eligility To Apply for Adjustment Assistance on October 10, 1980, applicable to all workers of certain designated support facilities of General Motors Corporation, Detroit, Michigan. The Certifications were published in the **Federal Register** on October 21, 1980 (45 FR 69600).

On the basis of additional information from General Motors, the Office of Trade Adjustment Assistance, on its

own motion reviewed the certifications. The additional information showed several layoffs occurring a few weeks prior to the June 1, 1980 impact date for the General Motors Central Office, Dayton, Ohio, TA-W-10,781, and the General Motors Central Office, Fairfax, Virginia, TA-W-10,797, and the General Motors Zone Sales Office, Carnegie, Pennsylvania, TA-W-10,839. These layoffs were not covered by the original impact date set in the instant certifications.

The intent of the certifications is to cover all workers at both the Dayton, Ohio and Fairfax, Virginia locations of General Motors Central Offices and General Motors Zone Sales Office in Carnegie, Pennsylvania, who were affected by the decline in production of import impacted GM vehicles. The Notice of Certifications, therefore, is amended to include new impact dates of May 15, 1980 and June 15, 1980 for workers at General Motors Central Offices at Dayton, Ohio, TA-W-10,781 and Fairfax, Virginia, TA-W-10,797, respectively and May 15, 1980 for workers at the General Motors Zone Sales Office, Carnegie, Pennsylvania, TA-W-10,839.

The certifications applicable to TA-W-10,781, TA-W-10,797, and TA-W-10,839 are hereby amended and issued as follows:

All workers of General Motors Central Office, Dayton, Ohio who became totally or partially separated from employment on or after May 15, 1980 and before November 1, 1980 and all workers of General Motors Central Office, Fairfax, Virginia who became totally or partially separated from employment on or after June 15, 1980 and before November 1, 1980 and all workers of the General Motors Zone Sales Office, Carnegie, Pennsylvania who became totally or partially separated from employment on or after May 15, 1980 and before November 1, 1980 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 20th day of November 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-37835 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,959]

Magda Fashions, Ltd.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation (TA-W-10,959) was initiated on September 22, 1980 in response to a worker petition which was filed on behalf of workers at Magda Fashions, Ltd., New York, New York. The workers produce leather garments.

On May 19, 1980, an investigation (TA-W-8,125) was initiated in response to a worker petition which was filed on behalf of the same group of workers.

Since the identical group of workers is the subject of the ongoing investigation (TA-W-8,125), a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 25th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-37833 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,288]

M&R Timber, Port Angeles, Washington; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 14, 1980 in response to a worker petition received on October 7, 1980 which was filed on behalf of workers and former workers producing lumber for M&R Timber, Port Angeles, Washington.

On September 22, 1980, a petition was filed on behalf of the same group of workers (TA-W-11,083).

Since the identical group of workers is the subject of the ongoing investigation (TA-W-11,083), a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 28th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-37837 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-28-M

Mercury Marine, Plant No. 12, et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increase of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Peitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 15, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than 15 December 1980.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 24th day of November, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Mercury Marine, Plant No. 12 (company)	Fond du Lac, Wis	11/17/80	11/13/80	TA-W-11,713	Outboards and stern drives.
Mercury Marine, Plant No. 14 (company)	Stillwater, Okla	11/17/80	11/13/80	TA-W-11,714	Stern drive.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Mercury Marine, Plant No. 64 (company)	Oshkosh, Wis	11/17/80	11/13/80	TA-W-11,715	Outboard motor and stern drive business.
Mercury Marine, Plant No. 30 (company)	St. Cloud, Fla	11/17/80	11/13/80	TA-W-11,716	Outboard motors and stern drive business.
Mercury Marine, Plant No. 37 (company)	Placida, Fla	11/17/80	11/13/80	TA-W-11,717	Outboard motors and stern drive business.
Mercury Marine, Plant No. 38A (company)	Oshkosh, Wis	11/17/80	11/13/80	TA-W-11,718	Outboard motor and stern drive business.
Mercury Marine, Plant No. 38 (company)	Oshkosh, Wis	11/17/80	11/13/80	TA-W-11,719	Outboard motors and stern drive business.
Mercury Marine, Plant No. 33 (company)	Oshkosh, Wis	11/17/80	11/13/80	TA-W-11,720	Outboard motors and stern drive business.
Mercury Marine, Plant No. 6 (company)	Oshkosh, Wis	11/17/80	11/13/80	TA-W-11,721	Outboard motors and stern drive business.
Americap, Inc. (workers)	Seymour, Conn	11/17/80	11/13/80	TA-W-11,722	Baseball caps.
Canton Malleable Iron Co. (USWA)	Canton, Ohio	11/17/80	11/13/80	TA-W-11,723	Malleable castings frame.
Jaguar-Rover-Triumph, Inc. (workers)	Mount Clemens, Mich	11/17/80	11/4/80	TA-W-11,724	Automobiles and auto parts.
Rockwell International, Rockwell-Draper Division (company).	Spartanburg, S.C	11/17/80	11/12/80	TA-W-11,725	Manufacturing looms for textiles.
Salant & Salant Corp. (workers)	Marked Tree, Ark	11/17/80	11/14/80	TA-W-11,726	Ladies' jeans.
Victory Optical Manufacturing Co. (IRT)	Newark, N.J	11/17/80	11/4/80	TA-W-11,727	Optical frames.
Walterboro Dress Corp. (workers)	Walterboro, S.C	11/17/80	11/14/80	TA-W-11,728	Dresses, blouses, two piece pant suits, two piece dresses and jackets.
Waterboro Patent Corp. (workers)	Waterboro, Maine	11/17/80	11/14/80	TA-W-11,729	Patent leather.
Reynolds Machine Co. (workers)	Alpena, Mich	11/17/80	11/13/80	TA-W-11,730	Die springs.
Central Steel & Wire Co. (workers)	Detroit, Mich	11/14/80	11/12/80	TA-W-11,731	Wholesaler of steel and other ferrous and nonferrous metals.
Gerardi Sportswear Co., Inc. (company)	Oceanside, N.Y	11/14/80	11/11/80	TA-W-11,732	Ladies' clothing.
Inland Equipment Co., Inc. (workers)	Lewisburg, Tenn	11/14/80	11/10/80	TA-W-11,733	Replacement parts for clutches.
Kelly Park, Ltd. (workers)	Naranjito, P.R	11/14/80	11/6/80	TA-W-11,734	Ladies' knit tops.
Kelly Park, Ltd. (workers)	Orocovis, P.R	11/14/80	11/6/80	TA-W-11,735	Ladies' knit tops.
Kelly Park, Ltd. (workers)	Rio Piedras, P.R	11/14/80	11/6/80	TA-W-11,736	Ladies' knit tops.
Lydall, Inc. (workers)	Manchester, Conn	11/14/80	11/12/80	TA-W-11,737	Fiber board.
The Main Gate, Ltd. (workers)	New York, N.Y	11/14/80	11/6/80	TA-W-11,738	Ladies' knit tops.
Syntax Corp. (workers)	Bay City, Mich	11/14/80	11/10/80	TA-W-11,739	Carbon material.
A M General Corp. (UAW)	Marshall, Tex	11/13/80	11/6/80	TA-W-11,740	Finish trim on buses and manufacturing trolley buses.
ASARCO Deming Milling Unit (USWA)	Deming, N. Mex	9/30/80	9/26/80	TA-W-11,741	Lead and zinc.
Clark Precision Molding Corp. (workers)	Fall River, Mass	11/10/80	11/6/80	TA-W-11,742	Luggage.
Chrysler Corp., Supply Sales & Marketing Office, Chrysler Center (company).	Highland Park, Mich	11/13/80	11/11/80	TA-W-11,743	Marketing of Chrysler Corp. auto products.
Chrysler Products (workers)	Claremore, Okla	11/12/80	11/7/80	TA-W-11,744	Auto dealership.
D & S Auto, Trim Division, Fort Clinton Manufacturing Co. (workers).	Alma, Mich	11/13/80	11/10/80	TA-W-11,745	Sun visors.
General Motors Corp., GMC Truck & Coach Division (UAW).	Pontiac, Mich	11/12/80	11/4/80	TA-W-11,746	Coaches (buses).
Nakagawa Corp. of Puerto Rico (workers)	San Lorenzo, P.R	11/13/80	11/10/80	TA-W-11,747	Costume jewelry.
Olsonite Corp. (workers)	Troy, Mich. (South Park St.)	11/10/80	11/2/80	TA-W-11,748	Plastic injection molding.
Acme Leather Sportswear (company)	Elizabeth, N.J	11/18/80	11/12/80	TA-W-11,749	Suede leather sportswear.
Butler Furniture Industries, Inc. (workers)	Carrollton, Ky	11/18/80	11/11/80	TA-W-11,750	Painted dining and kitchen furniture.
Cole Forest Products, Inc. (workers)	Grand Rapids, Minn	11/19/80	11/11/80	TA-W-11,751	Corn cribbing rolls.
Commercial Dress Co. (ILGWU)	High Bridge, N.J	11/19/80	11/13/80	TA-W-11,752	Dresses.
Empire Knit Wear (UAW)	New York, N.Y	11/19/80	11/17/80	TA-W-11,753	Sweaters.
Florsheim Shoe Co. (ACTWA)	Chicago, Ill	11/19/80	11/17/80	TA-W-11,754	Men's cement dress shoes.
Penn Fishing Tackle Manufacturing Co. (workers).	Philadelphia, Pa	11/18/80	11/13/80	TA-W-11,755	Salt water fishing, tackle.
Rockwell International (AIW)	Kenton, Ohio	9/5/80	8/20/80	TA-W-11,756	Axles for trucks.
Smart Maid Coat & Suit (ILGWU)	New York, N.Y	11/19/80	11/14/80	TA-W-11,757	Infant's coats.
Acme Leather Sportswear (company)	Elizabeth, N.J. (Marshall St.)	11/18/80	11/12/80	TA-W-11,758	Suede leather sportswear.
Amalfi Sportswear, Inc. (company)	Fort Lauderdale, Fla	11/18/80	11/12/80	TA-W-11,759	Dresses and sportswear.
Cleveland Metal Finishing (workers)	Cleveland, Ohio	11/18/80	11/12/80	TA-W-11,760	Auto parts.
G.E. Co., Hermetic Motor Department (workers).	Tiffin, Ohio	11/18/80	11/13/80	TA-W-11,761	Rotors and stators.
I.R.C. Fibers Co.—American Cyanamid Co. (ACTWU).	Painesville, Ohio	11/18/80	11/10/80	TA-W-11,762	Polyester tire cord for cars.
John A. Roebling Steel Corp. (company)	Roebling, N.J	11/18/80	11/12/80	TA-W-11,763	Steel billets.
Riverside Metal Products (workers)	Port Huron, Mich	11/18/80	11/10/80	TA-W-11,764	Automotive hardware.
Speidel, Division of Textron (IAM)	East Providence, R.I	11/18/80	11/10/80	TA-W-11,765	Watch bands and jewelry.
Speidel, Division of Textron (IAM)	Providence, R.I	11/18/80	11/10/80	TA-W-11,766	Watch bands and jewelry.
Speidel, Division of Textron (IAM)	Smithfield, R.I	11/18/80	11/10/80	TA-W-11,767	Watch bands and jewelry.
Transue & Williams, Division of Standard Alliance Industries, Inc., Stamping Division (AFL-CIO).	Alliance, Ohio	11/18/80	11/11/80	TA-W-11,768	Deep drawn metal stampings with many assemblies and welding.
Westinghouse, Transformer Division, Muncie Plant.	Muncie, Ind	11/18/80	11/1/80	TA-W-11,769	Cooling systems for transformers.
I.D.T. (workers)	Quincy, Mass	11/18/80	11/14/80	TA-W-11,770	Supplies supervisors and materials to General Dynamics in Quincy for shipbuilding living quarters.
Inspiration Consolidated Copper Co. (USWA)	Claypool, Ariz	11/14/80	11/5/80	TA-W-11,771	Refined copper and byproducts.
Jones Shake & Logging Co. (workers)	Rockport, Wash	11/18/80	11/4/80	TA-W-11,772	Shakes.
Modine Manufacturing Co. (workers)	La Porte, Ind	11/18/80	11/11/80	TA-W-11,773	Radiators.
Murphy Diesel Co. (IAM)	Milwaukee, Wis	11/18/80	11/13/80	TA-W-11,774	Diesel engines.
Outboard Marine Corp., Marine Engineering (workers).	Waukegan, Ill	11/18/80	11/15/80	TA-W-11,775	Marine engines and accessories.
Rexnord, Inc., (USWA)	Wocester, Mass	9/9/80	8/14/80	TA-W-11,776	Industrial chain.
Richard Callaghan, Inc. (workers)	New York, N.Y	11/19/80	11/6/80	TA-W-11,777	Designer Clothing.
Roselon Industries, Inc., Spinlon Division (company).	Spencer, Tenn	11/20/80	11/18/80	TA-W-11,778	Manufacturing and sale of textured synthetic filament yarns.
Genesco, Inc., Headquarters, (company)	Nashville, Tenn	11/20/80	11/14/80	TA-W-11,779	Footwear.
Genesco, Inc., J & M Plant (company)	Nashville, Tenn	11/20/80	11/14/80	TA-W-11,780	Footwear.
Genesco, Inc., Danville Plant (company)	Danville, Ky	11/20/80	11/14/80	TA-W-11,781	Footwear.
Genesco, Inc., Fulton Plant (company)	Fulton, Miss	11/20/80	11/14/80	TA-W-11,782	Footwear.
Genesco, Inc., Iuka Plant (company)	Iuka, Miss	11/20/80	11/14/80	TA-W-11,783	Footwear.
Genesco, Inc., Ripley Plant (company)	Ripley, Miss	11/20/80	11/14/80	TA-W-11,784	Footwear.
Genesco, Inc., McMinnville Plant (company)	McMinnville, Tenn	11/20/80	11/14/80	TA-W-11,785	Footwear.
Genesco, Inc., Lewisburg Plant (company)	Lewisburg, Tenn	11/20/80	11/14/80	TA-W-11,786	Footwear.
Genesco, Inc., Pulaski Plant (company)	Pulaski, Tenn	11/20/80	11/14/80	TA-W-11,787	Footwear.
Genesco, Inc., Waynesboro Plant (company)	Waynesboro, Tenn	11/20/80	11/14/80	TA-W-11,788	Footwear.
Genesco, Inc., Hohenwald Plant (company)	Hohenwald, Tenn	11/20/80	11/14/80	TA-W-11,789	Footwear.
Genesco, Inc., Centerville Plant (company)	Centerville, Tenn	11/20/80	11/14/80	TA-W-11,790	Footwear.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Genesco, Inc., Camden Plant (company)	Camden, Tenn	11/20/80	11/14/80	TA-W-11,791	Footwear.
Genesco, Inc., Chapel Hill Terminal (company).	Chapel Hill, Tenn	11/20/80	11/14/80	TA-W-11,792	Footwear warehouse and terminal.
Genesco, Inc., Fayetteville Terminal (company).	Fayetteville, Tenn	11/20/80	11/14/80	TA-W-11,793	Footwear warehouse and terminal.
Genesco, Inc., Genstar Terminal (company)	Nashville, Tenn	11/20/80	11/14/80	TA-W-11,794	Footwear warehouse and terminal.
Genesco, Inc., Huntsville Terminal (company).	Huntsville, Ala	11/20/80	11/14/80	TA-W-11,795	Footwear warehouse and terminal.
Genesco, Inc., J & M Terminal (company)	Nashville, Tenn	11/20/80	11/14/80	TA-W-11,796	Footwear warehouse and terminal.
Genesco, Inc., Customer Service Terminal (company).	Nashville, Tenn	11/20/80	11/14/80	TA-W-11,797	Footwear warehouse and terminal.
Genesco, Inc., Fayetteville Terminal MMD (company).	Fayetteville, Tenn	11/20/80	11/14/80	TA-W-11,798	Footwear warehouse and terminal.
Genesco, Inc., 63d Ave. Warehouse (company).	Nashville, Tenn	11/20/80	11/14/80	TA-W-11,799	Footwear warehouse and terminal.
Genesco, Inc., Main St. General Maintenance & Capitol Products (company).	Nashville, Tenn	11/20/80	11/14/80	TA-W-11,800	Footwear warehouse and terminal.
Genesco, Inc., Charlotte, N.C. Dominion Shoe Co. (company).	Charlotte, N.C	11/20/80	11/14/80	TA-W-11,801	Footwear warehouse and terminal.
Genesco, Inc., Chapel Hill Sole Cutting (company).	Chapel Hill, Tenn	11/20/80	11/14/80	TA-W-11,802	Shoe components.
Genesco, Inc., General Adhesives & Chemical (company).	Nashville, Tenn	11/20/80	11/14/80	TA-W-11,803	Shoe components.
Genesco, Inc., Southern Sole (company)	Nashville, Tenn	11/20/80	11/14/80	TA-W-11,804	Shoe components.
Genesco, Inc., Tullahoma Capitol Products (company).	Tullahoma, Tenn	11/20/80	11/14/80	TA-W-11,805	Shoe components.
Facet-Glas of Michigan (workers)	Richmond, Mich	11/20/80	11/18/80	TA-W-11,806	Fiberglass bathtubs, showers.
Lou Levy & Sons Fashion (ILGWU)	Jersey City, N.J	11/20/80	11/18/80	TA-W-11,807	Ladies' coats.
Uni-bond, Inc. (workers)	Ferndale, Mich	11/20/80	11/14/80	TA-W-11,808	Brake shoes.
Trail Timber (company)	Darrington, Wash	11/18/80	11/10/80	TA-W-11,809	Hemlock & white fir logs.
Jacoby Bender, Inc. (company)	Woodside, N.Y	11/20/80	11/17/80	TA-W-11,810	Watch attachments.

[FR Doc. 80-37829 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,499]

Palm Beach Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 2, 1980 in response to a worker petition received on August 8, 1980 which was filed on behalf of workers and former workers producing menswear at all divisions of Palm Beach Incorporated, Cincinnati, Ohio.

The Notice of Investigation was published in the **Federal Register.** No public hearing was requested and none was held.

Section 221(a) of the Trade Act of 1974 states that a petition for certification of eligibility to apply for adjustment assistance may be filed with the Secretary of Labor by a group of workers or by their certified or recognized union or other duly authorized representative. During the course of the investigation, it was established that the petitioner is neither an authorized representative of the workers of Palm Beach Incorporated, nor a company official. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 25th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-37832 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,645]

Vamco Products; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 8, 1980 in response to a petition received on September 3, 1980 which was filed on behalf of workers at Vamco Products, St. Bernard, Ohio. The workers produce thinners, acids and oils.

The petitioning company official requested in a letter that the petition be withdrawn. On the basis of this request, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 26th day of November 1980.

Marvin M. Fooks,

Director, Office Trade Adjustment Assistance.

[FR Doc. 80-37831 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-28-M

Office of Pension and Welfare Benefit Programs

[Application No. D-1134]

Proposed Exemption for Certain Transactions Involving the National Reserve Life Insurance Co.; Pension and Profit Sharing Plan Located in Topeka, Kans.

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 the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption would exempt the purchase and holding by the National Reserve Life Insurance Company Pension and Profit Sharing Plan (the Plan) of participations in real estate mortgage loans, with the National Reserve Life Insurance Company (the Employer) for a five year period. In addition, the proposed exemption provides for the repurchase of such participations by the Employer. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Employer 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 January 16, 1981.

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-1134. 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 INFORMTION 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 sections 406(a), 406(b)(1) and 406(b)(2), and 407(a) 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, 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.

Temporary Nature of the Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant. Should the applicant wish to continue the transactions beyond the five year period, the applicant may submit another application for an exemption.

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 is a profit sharing plan with 90 participants and assets totalling $2,737,243 as of December 31, 1977. Plan investment decisions are made by five trustees, all of whom are employees of the Employer. Three of the trustees are officers of the Employer.

2. The Employer, a South Dakota corporation, has been engaged in the business of selling and issuing ordinary life insurance and annuity products since 1919. Kansas City Life Insurance Company, a Missouri corporation, owns in excess of 90% of the voting capital stock of the employer. As a part of its business operations, the Employer, through its Investment Department, regularly extends financing to various entities for real estate development and improvements.

3. The Employer is requesting an exemption to allow the Plan to participate in its real estate loans secured by first mortgages. The Employer, through its Investment Department, would arrange the loan and receive a promissory note and a first mortgage from the borrower. The Employer will assign to the Plan that portion of the borrower's promissory note and mortgage which equals the amount of cash transferred by the Plan as its participation in the loan.

4. The Plan may elect to participate in each loan which is secured by a first mortgage on real estate and which is made in the ordinary course of the Employer's business. The Plan may exercise its discretion in determining those loans in which it desires to participate, and under no circumstances will the Plan be obligated to participate in any loan which it deems to be detrimental to the best interests of the Plan and its participants and beneficiaries.

5. The Plan's participation in any single mortgage loan transaction will not exceed 10% of the entire amount of the mortgage loan. The Plan's participation will be further limited to .5% of total Plan assets as of the end of the previous calendar year per individual investment. No more than 30% of total Plan assets will be invested at any one time in all real estate mortgage loans combined, including any such loans made without the Employer's participation. These restrictions permit the Plan to invest in a mortgage loan in an amount which does not involve a substantial commitment of Plan assets. If the Plan were to invest in mortgage loans with unrelated parties, it would be required to commit much more of its capital than is required in the proposed transactions which limit the Plan investment in each individual participation to .5% of total Plan assets.

6. The Employer will guarantee that it will repurchase the Plan's interest in any mortgage in the event of a default or for whatever reason the Plan deems such repurchase necessary. The Employer will make such repurchase within 45 days after a demand is made by the Plan. A default will occur when the provisions of the note and mortgage or deed of trust or other security instrument have been breached resulting in the right of the noteholder to call the note due and payable in full and foreclose upon the securing property.

7. The repurchase price will be the balance of any principal owed to the Plan plus any accrued interest to the date of repurchase. The Employer will pay all fees, penalties or any other charges in connection with such repurchase so that the Plan will suffer no discount or any other loss.

8. The Employer intends to hold its interest in ecah mortgage loan. It is not the practice of the Employer to sell mortgage notes it has received in connection with these loans.

9. The Employer will not charge the Plan for any services rendered in making a loan available to the Plan, for investment services, or for any bookkeeping or accounting services associated therewith. Any service fees or expenses charged in servicing a loan by a party not affiliated with the Employer will be divided on a pro rata basis between the Plan and the Employer.

10. Each payment of interest and principal received from the borrower on each loan in which the Plan participates will be divided on a pro rata basis between the Plan and the Employer. The Plan's pro rata share of a particular principal and interest payment will be determined by dividing the amount which the Plan invested in such loan by the total amount invested by the Employer and the Plan. In addition, the Plan will receive its pro rata share of any commitment fees required to be paid by the borrower. Also, any prepayment penalties, which are required if a loan is paid prior to its maturity date, will be divided on a pro rata basis between the Plan and the Employer.

11. All loan participations in which the Plan will engage with the Employer will be documented with duplicate sets of IBM records, as well as manually kept records, separating the Plan's interest from that of the Employer. Annual CPA audits of the Plan's participation interests will be made.

12. The Plan and the Employer will enter a binding contract setting forth all of the above loan participation arrangements.

13. From 1971 to 1974 the Plan participated in real estate mortgage loans with the Employer and realized an average net return of 8.9% on such participations, which was in excess of most of th Plan's other investments for that period.

14. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(1) the procedures have been proven workable through past experience in

similar loan participations involving the Plan and the Employer;

(2) each loan transaction will be carefully documented and thus easy to verify;

(3) the Plan will be able to invest in mortgage loans which will give it a high rate of return without committing a substantial amount of Plan assets to any one loan;

(4) the contract between the Plan and the Employer, the promissory notes, the first mortgages, and the guarantee that the Employer will repurchase any mortgage from the Plan in the event of a default or whenever the Plan deems such repurchase to be appropriate, give assurances that the Plan will not suffer a loss resulting from these loan participations; and

(5) the Plan trustees have determined that the proposed transaction is appropriate and is in the best interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Notice will be provided to all Plan participants and beneficiaries by mailing of a copy of the Notice of Pendency as published in the Federal Register and by posting a copy of the Notice of Pendency in and about work locations in the Executive Offices of the Employer. The notice will also inform interested persons of their right to comment and request a hearing within the time period set forth in the Notice of Pendency. Such notice will be given within 10 days after publication of the Notice of Pendency 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 th Act and section 4975(c)(2) of the Code does not relieve as 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 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 an exemption may be granted under section 408(a) of th 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 transaction 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 considereing 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 (2), and 407(a) of the Act and the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase and holding by the Plan of participations in certain real estate first mortgage loans with the Employer for a five year period beginning with the date of granting of this exemption. In addition, the restrictions and sanctions shall not apply to the repurchase of the participants by the Employer during such five year period. Subsequent to the expiration date of the exemption, the restrictions and sanctions shall not apply to the holding by the Plan and repurchase by the Employer of such participations, provided such participations were acquired by the Plan during the period the exemption was in effect.

The exemption shall be applicable provided:

The Plan shall maintain or cause to be maintained for a period of six years from the date of each such 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 curcumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six year period; and

2. The Employer shall not 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 such records are not maintained, or are not available for examination as required by the paragraph below.

Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to above 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 subparagraphs (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 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 December, 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs; Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-37852 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-94; Exemption Application No. D-1788]

Exemption From the Prohibitions for Certain Transactions Involving the Christopher Commercial Corp. Retirement Plan Located in San Francisco, Calif.

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the sale of certain common stock (the Stock) by the Christopher Commercial Corp. Retirment Plan (the Plan) to Mr. George Christopher, a disqualified person with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander 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) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 16, 1980, notice was published in the **Federal Register** (45 FR 61402) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the sanctions resulting from the application of section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(a)(1) (A) and through (E) of the Code, for the transaction described in an application filed by Mr. Christopher of the Plan pursuant to 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 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. No public comments and no requests for a hearing were received by the Department. Since Mr. Christopher is the only participant in the Plan and 100% stockholder of the Christopher Commercial Corp., the Plan sponsor, it was determined that there was no need to distribute the notice of pendency to interested persons.

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 4975(c)(2) of the Code does not relieve a fiduciary or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; 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 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of 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 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 sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale, for cash, to Mr. George Christopher by the Plan of 9400 shares of the Stock for the higher of $9.75 per share or the fair market value of the Stock on the date of the sale.

The availability of this exemption is subject to the express condition 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 December 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs; Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-37853 Filed 12-3-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1747]

Proposed Exemption for Certain Transactions Involving the Restated Profit Sharing Trust and Plan of Fox Valley Tool & Die, Inc., Located in Kaukauna, Wisconsin

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 the Internal Revenues Code of 1954 (the Code). The proposed exemption would exempt a loan of $125,000 by the Restated Profit Sharing Trust and Plan of Fox Valley Tool & Die, Inc. (the Plan) to Fox Valley Tool & Die, Inc. (the Employer). The proposed exemption, if granted, would affect 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 on or before January 27, 1981.

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-1747. 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 an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(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 the Employer, 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 exemptions which are summarized below. Interested persons are referred to the application on file with the Department for the complete representation of the applicant.

1. The Plan is a profit-sharing plan with approximately 14 participants. There are no former Plan participants with deferred vestment benefits due them from the Plan, no retirees with benefits due them from the Plan, and no beneficiaries with benefits due them from the Plan. Messrs. Richard Heiting, John Tetzlaff, and David Andres are the administrators and trustees of the Plan. They are also the shareholders of the Employer. As of June 20, 1980, the Plan had assets whose market value aggregated $336,544.

2. The Employer has constructed a major addition to its industrial building located at Route 4, Highway 96, Kaukauna, Wisconsin. At the time construction commenced, the cost of the addition was expected to be $125,000. At this location the Employer also owns the original industrial building, a single family residence, and some undeveloped land.

3. It is proposed that the plan will lend $125,000 to the Employer for the permanent financing of the addition to the Employer's industrial building. This amount represents approximately 37 percent of the Plan's total assets as of June 20, 1980. The trustees of the Plan expect that the remaining liquid assets of the Plan will be sufficient to pay all benefits and all Plan expenses arising during the term of the proposed loan.

4. The proposed loan will be evidenced by a mortgage note payable to the Plan by the Employer. The term of the note will be five years. Repayments will be made in monthly installments covering principal and interest. Except for the last installment payment, each monthly installment payment will equal the amount required to amortize the loan over a 20-year period. The last installment payment, due on the maturity date of the note, will equal the entire remaining unpaid principal and interest. The note permits the Employer to prepay the loan without penalty.

Interest on the loan will be at the rate of the higher of ten percent per annum or ½ of one percent above the commercial prime lending in effect at West Bank & Trust, Green Bay, Wisconsin (the Bank) on the execution date of the note and at the beginning of each succeeding calendar quarter. The applicant represents that the amount of interest paid on the loan that exceeds the commercial prime lending rate described in the preceding sentence will be treated as an Employer contribution to the Plan and that such excess, when added to the balance of the annual additions to the Plan, will not exceed the limitations prescribed by section 415 of the Code.

5. The note will be secured by a first mortgage executed on the same date as the note, on all of the real estate owned by the Employer at Route 4, Highway 96, Kaukauna, Wisconsin (described in item 2, above). The mortgage will be recorded with the Outagamie County, Wisconsin, Register of Deeds. An appraisal dated December 7, 1979, by Richard H. Vogels, of Appraisers, Inc. of Green Bay, Wisconsin, states that the fair market value of this property after the completion of the addition is $311,000 (i.e., $281,000 for the plant and site, including the addition, and $30,000 for the residence). The appraiser also estimates that (a) approximately $200,000 to $220,000 ($13 to $14 per square foot of plant including site) may be realized if the plant and site, including the addition, were vacant and for sale under somewhat distressed conditions, and (b) the value of the house would probably not reduce substantially.

6. On the date the note is executed, the Employer will provide the Plan with an Attorney's Opinion of Title in standard form or Title Insurance in the amount of the initial principal balance of the loan showing the Plan's mortgage as a first and paramount lien on the real estate. All expenses of preparing the loan documents and closing the loan transaction will be borne by the Employer. The Employer will keep the mortaged property insured against the fire and all other hazards, with certain specified exceptions, such as an earthquake, flood, and sewer backup. The applicant represents that insurance against the excluded risks is not normally provided in this geographic area.

7. The Bank has stated that in its opinion the proposed loan is an appropriate investment for the Plan, based on the investment policy of the Bank's Trust Department. The applicant represents that the Employer and the Bank are not related through the ownership of stock, through common directors or officers, or through any other common management or ownership relationship. The employer considers the Bank its primary commercial depository. The Employer presently has no loans from the Bank. Although the Employer may borrow from the Bank in the future, the Employer presently has no firm plans for such borrowing. The Employer has no established line of credit with the Bank. As of October 2, 1980, the ratio of Employer total deposits on hand with the Bank to total customer deposits on hand with the Bank was .001137556.

The Bank has also stated that it is willing to act as an independent fiduciary with full authority and responsibility to collect payments, sell or otherwise transfer the mortgage and note, foreclose in case of default, and otherwise supervise the loan in the best interests of the Plan participants and beneficiaries. The applicant represents that the Employer will pay the bank a reasonable fee for its services.

The Bank has also stated that it would have been willing to loan the Employer $125,000 with interest at the prime rate, adjusted annually, with no minimum rate and no prepayment penalty, amortized over at least a 20-year period, and secured by the real estate described above. The Bank believes that all, or a part, of the proposed loan by the Plan to the Employer would be marketable by the Plan to various local commercial lending institutions, including the Bank.

8. The trustees of the plan have determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries.

9. In summary, the applicant represents that the proposed loan will satisfy the criteria of section 408(a) of the Act because (a) according to an independent appraiser, the fair market value of the real estate which will secure the proposed loan is approximately 2 to 2½ times greater than the initial principal balance of the loan; (b) the Bank, an independent party, is of the opinion that it would make a loan of the same principal amount to the Employer secured by the same real property but at a lesser rate of interest and for a longer term; (c) the Bank will serve as collection agent for

the Plan and will fully supervise the loan in the best interests of the Plan participants and beneficiaries; (d) the proposed loan will be marketable by the Plan to various local lenders; and (e) the Bank has determined that the loan is an appropriate investment for the Plan.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Within 30 days after publication of the proposed exemption in the **Federal Register**, notice of the proposed exemption will be provided to all present Plan participants by personal delivery or first class mail. The notice will contain a copy of the notice of pendency of the exemption published in the **Federal Register** and will inform the participant of his or her right to comment and to request a hearing.

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 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 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 406(b)(2) of the Act and 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 shall not apply to the loan of $125,000 by the Plan to the Employer as described above provided that the terms and conditions of the loan are not less favorable to the Plan than those obtainable in a similar transaction with an unrelated third party.

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 December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Program; Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80–37854 Filed 12–4–80; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–970]

Proposed Exemption for Certain Transactions Involving the Simmons First National Bank Pension Plan Located in Pine Bluff, Arkansas

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 contribution of an undivided one-half interest in certain farm property to the Simmons First National Bank Pension Plan (the Plan) by the employer, Simmons First National Bank (the Bank), and the assignment by the Bank to the Plan of its undivided interest in a lease of another parcel of farmland adjacent to the contributed property. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Bank, and other persons having an interest in the farm.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before January 14, 1981.

EFFECTIVE DATE: If granted the exemption will be effective December 30, 1977.

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–970. 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:

Mr. Elliot Arditti of the Department of Labor, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(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 on behalf of the Bank, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713), October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a defined benefit pension plan with assets of $694,422.57 as of May 21, 1979. There are 196 active Plan participants. The Bank is the trustee of the Plan.

2. The Bank has, subject to obtaining an exemption from the Department, contributed to the Plan an undivided one-half fee simple interest in farmland known as the Tamo Farm or Baker-Matthews Farm (the Farm) on December 30, 1977. The Bank intends to value its contribution of the Farm at $175,000. The Bank acquired its ownership interest in the Farm by a deed of one of its mortgagors in lieu of foreclosure on June 7, 1972. The debt which gave rise to the Bank's foreclosure was unrelated to the purchase or operation of the Farm.

3. The Farm comprises 765 acres and is located west of the town of Grady in Lincoln County near Pine Bluff, Arkansas. Rice and soybeans are the principal crops raised. The Farm is, and has been since 1961, operated by a tenant pursuant to written Farm Lease Agreements. For the 1972–1978 period, the average annual net income for each of the two co-owners of the Farm was $26,927.32. During the same period, $54,741.45 was spent by the co-owners for capital improvements to the Farm.

4. The one-half interest in the Farm not owned by the Bank is owned by the Nixon Family (Nixons), who, but for a minor savings balance with the Bank as well as a very small line of credit with the Bank from Mr. Nixon's business (less than ½ of 1% of the bank's total line of credit), have no other relationship with the Bank. The Nixons have indicated that they are not interested in either purchasing the other one-half interest or selling their one-half interest.

5. Comptroller of the Currency regulations regarding property such as the Farm, obtained through default by a national bank, stipulate that the property must be divested within five years. In that the Bank acquired its one-half ownership interest in the Farm in 1972, it is faced with the alternative of selling the interest to unrelated entities or selling or donating the Farm to the Plan. The Bank has determined that the one-half interest is an excellent investment and has chosen to retain it for the benefit of its employees in the Plan.

6. The entire fee simple interest is encumbered by a $45,000, 5¾ percent mortgage with an unrelated party that matures in 1983. The Bank's tax basis in the Farm for its undivided one-half interest is $175,743.07. The C. H. Triplett Company of Pine Bluff appraised the Farm in 1977 at a value of $498,000 reduced by the principal balance of the mortgage and any accrued interest. The appraisal notes that inquiries of other real estate appraisers resulted in opinions that the discount for the sale of the undivided one-half interest ranged from 5 percent ot 30 percent. The Bank has therefore valued its one-half interest in the property at $175,000. The Bank represents that if the Plan does not realize at least $175,000 upon the sale of its interest in the Farm, the Bank will purchase the Plan's interest for $175,000 or pay the difference between the selling price and $175,000.

8. The one-half interest in the Farm is readily marketable according to H. E. Slaten, Jr. and Fred D. Shanks, Jr. independent real estate appraisers who are knowledgeable of farm real estate in the Pine Bluff, Arkansas area.

9. The Trust Department of the Bank has a history of managing farmland in the area. Presently it manages a total of 8,801 acres involving 19 farming operations including management of the subject property. The fee charged by the Bank for this farm management service is 5% of the income of the farm being managed. The Trust Department will waive this 5% fee with respect to the one-half undivided interest contributed to the Plan by the Bank.

10. On December 30, 1977, the Bank made an assignment to the Plan of its interest in 280 acres of farmland which are leased adjacent to the Farm. The lease, which is to run until December 31, 1984, was entered into between a family unrelated to the Plan, as lessor, and the Bank and the Nixons as lessees. The Bank represents that this additional land is valuable to the Plan since it allows favorable crop rotation and mix from year to year. The consideration paid to the Bank by the Plan for this assignment was $1.00.

11. In summary, the applicants represent that the proposed exemption satisfies the statutory criteria of section 408(a) of the Act in that:

(a) The proposed transactions will provide the Plan with a high quality asset that generates a high current return and which should appreciate in the future;

(b) The contribution is a one-time transaction;

(c) The Farm will continue to be managed by the Trust Department of the Bank, an entity that is experienced in farm management, yet the normal 5% pf income fee will be waived; and

(d) The Bank as Plan Trustee has considered the transaction and has concluded that it meets the financial requirements and goals of the Plan.

Notice to Interested Persons

Notice of the pending exemption will be given to all active and retired participants of the Plan within ten days of the publication of this notice in the **Federal Register**. Notice will be provided by distribution of copies of the notice published in the **Federal Register** personally to all active participants and by first class mail to all other participants and beneficiaries.

The notice will also inform interested persons of their right to comment and request a hearing with regard to 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 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 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 transaction is in fact a prohibited transaction.

Written Comments and Hearing and 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 sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the contribution by the Bank of a one-half interest in the Farm to the Plan, and the assignment to the Plan of the Bank's interest in a lease of farmland adjacent to the Farm, provided that the contribution of the Farm and the assignment of the lease interest are valued at their respective fair market values on the date of the transactions.

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 which are the subject of this exemption.

Signed at Washington, D.C., this 1st day of December 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs; Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-37855 Filed 12-3-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1225]

Proposed Exemption for Certain Transactions Involving the David A. Levitsky, M.D. and Charles L. Miller, M.D., P.A. Profit Sharing Plan and Trust Located in Wilmington, Delaware

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 the Internal Revenue Code of 1954 (the Code). The proposed exemption would retroactively exempt the sale on June 4, 1979, for cash of real property by the David A. Levitsky, M.D. and Charles L. Miller, M.D., P.A. Profit Sharing Plan and Trust (the Plan) to David A.Levitsky and Marilyn L. Levitsky, his wife, and Charles L. Miller and Lois I. Miller, his wife (the Purchasers). The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan and the Purchasers.

DATES: Written comments and requests for a public hearing must be received by the Department on or before January 20, 1981.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective June 4, 1979.

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–1225. The application for exemption and 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: Horace C. Green of the Department, telephone (202) 523–8196. (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 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 on behalf of the trustees (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). 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 was established by David A. Levitsky, M.D. and Charles L. Miller, M.D., P.A., (the Employer) as a profit sharing plan in 1970 and had nine participants and total assets of $237,905 as of March 31 1979. Investment decisions for the Plan are made by the Trustees of the Plan who are David A. Levitsky, M.D., an employee and president of the Employer and Charles L. Miller, M.D., an employee of the Employer.

2. On September 15, 1976, the Plan purchased from an unrelated third party a parcel of unimproved real property (the Property), consisting of 4.082 acres, for $47,000. The Property is located on the West side of Route 7 in White Clay Creek Hundred, New Castle, Delaware. At the time of the purchase, the

intention of the Trustees was to negotiate a long term lease of the Property with the Purchasers who would build medical buildings on the Property. The Plan did not have the financial resources to develop the Property. The Trustees determined that this was a reasonable investment because the Wilmington Medical Center (the Center) had announced it would construct a major suburban hospital (the Hospital) in the vicinity of the Property and that the Hospital would generate a demand for medical office space. It was believed that the lease payments would have generated an annual rental of $30,000 for the Plan.

3. On November 28, 1978, the Trustees filed an application for exemption with the Department requesting that the lease of the Property by the Plan to the Purchasers be exempted. Subsequent to the purchase of the Property, community groups from the City of Wilmington, Delaware, brought a successful court action to enjoin the center from constructing the Hospital. The Trustees determined that the injunction would sufficiently delay the construction of the Hospital, thus substantially reducing the demands for medical space so as to make the proposed leasing arrangement unworkable. As a result, the Trustees abandoned their plans of leasing the Property to the Purchasers. Accordingly, on May 4, 1979, the Trustees filed an amendment to the application for exemption with the Department rescinding the request for an exemption for the leasing arrangement and in lieu thereof requested that the sale of the Property by the Plan to the Purchasers be exempted.

4. From its date of acquisition to June of 1979, the Property did not generate any income to the Plan. It was believed that if this situation continued beyond June of 1979, the result would have been a hardship to the Plan and its participants and beneficiaries. The Plan's total expenses (interest, taxes, assessment costs, etc.) for the Property amounted to $13,781 as of March 31, 1979. The Property represented 42 percent of the Plan's assets as of March 31, 1979.

5. In addition to the fact that the Property represented a substantial portion of the Plan's assets and was non-income producing, the Trustees believed that the market value of the Property would decline because of the expected rise in interest rates and the soaring land development costs in the area. The Trustees further believed that the failure to begin construction on the Hospital made the Plan's proposal to have the Property developed for medical offices inordinately risky, inasumuch as the expected demand for medical offices in that area would not be generated if the Hospital was not completed. Based on the above facts, the Trustees determined that a sale of the Property for its fair market value would be in the best interest of the Plan and its participants and beneficiaries.

6. An appraisal of the Property was performed by A. J. Matas, an independent appraiser, on April 26, 1979, who valued the Property at $100,000. In the opinion of the appraiser, the appreciation in value of the Property resulted from the fact that the Property adjoined a new shopping mall which had been constructed subsequent to the acquisition of the Property.

7. On April 27, 1979, the Trustees received from the Purchasers a conditional sales offer to purchase the Property for $100,000 cash (the Offer), provided that the sale of the Property would be consummated on or before June 4, 1979. This date was of utmost importance to the Purchasers because the Purchasers had financial commitments which would expire on that date. The Offer was accepted by the Trustees. It was believed that no unrelated party could be found who would purchase the Property for a price comparable to that offered by the Purchasers. Therefore, on June 4, 1979, the Plan sold the Property to the Purchasers for the then appraised value of $100,000. No commissions were paid in connection with the sale.

8. A second appraisal of the Property was performed by A. J. Matas on June 4, 1979. Mr. Matas valued the Property at $90,000. In the opinion of Mr. Matas, the decrease in value from the prior appraisal was due to the following reasons:

(a) the failure to begin construction of the Hospital in the area;

(b) rising interest rates and a severe scarcity of mortgage money; and

(c) undeveloped properties in the area surrounding the Property had been on the market for one to two years before a buyer could be found.

Thus, by selling the Property for $100,000, the Plan was able to dispose of the Property at a price that was $10,000 in excess of its most recent appraisal.

9. In summary, the applicant represents that the sale of the Property by the Plan meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) the sale was a one time transaction for cash; (b) the sales price of the Property was in excess of its appraised value on the date of the sale; (c) the Plan was able to dispose of a non-income producing asset at a substantial profit; (d) no sales commissions were paid by the Plan; and (e) the Trustees determined that the transaction was appropriate for the Plan and in the best interests of the participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested parties, including all Plan participants and beneficiaries, within fifteen (15) days of the publication of the notice of pendency in the **Federal Register**, by hand delivery or by mailing copies of the notice of pendency published in the **Federal Register**. Such notice shall inform the interested persons of their right to comment and right to request a hearing within the period set forth in the notice of pendency.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

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 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 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 sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale by the Plan of the Property to the Purchasers on June 4, 1979, provided that the sales price was not less than 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 which is the subject of this exemption.

Signed at Washington, D.C., this 1st day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs; Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-37856 Filed 12-4-80; 8:45 am]

BILLING CODE 4510-29-M

OFFICE OF MANAGEMENT AND BUDGET

President's Commission for a National Agenda for the Eighties; Meeting

December 2, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of Past Meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Executive Committee of the President's Commission for a National Agenda for the Eighties, is being held on December 5, 1980 from 9:30 a.m. to 10:00 a.m. in Washington, D.C. The meeting was held at the New Executive Office Building in room 10103, 17th and Pennsylvania Avenue, N.W.

The purpose of the meeting is to discuss elements of the Commission's report.

Minutes of the meeting are available upon request.

FOR FURTHER INFORMATION CONTACT:

Ms. Loretta Marshall,
President's Commission for a National Agenda for the Eighties,
Office of Administration,
744 Jackson Place, Northwest,
Washington, D.C. 20006
(202) 275–0616.

Daniel F. Mann,

Budget and Management Officer.

[FR Doc. 80-37924 Filed 12-4-80; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 17346; File No. 4–208]

American Stock Exchange, Inc., et al., Order Approving Proposed Amendment to the Intermarket Trading System Plan

November 28, 1980.

In the matter of American Stock Exchange, Inc., Boston Stock Exchange, Inc., Midwest Stock Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., Philadelphia Stock Exchange, Inc.

On September 3, 1980, the participants in the Intermarket Trading System ("ITS")[1] filed with the Commission an amendment ("Amendment") to the "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage" ("ITS Plan").[2] The Amendment provides the ITS Operating Committee[3] with authority to implement and administer a pilot program with respect to the Pre-Opening Application created under the terms of the ITS Plan.[4] The pilot would be designed to determine the appropriateness of effecting the Pre-Opening Application based on price parameters outside the previous trading day's closing price which are other than those currently contained in the ITS Plan and shortening the period of time after which an inquiring specialist may open a stock in his market after inquiring of other specialists.

Notice of the proposed Amendment was given by issuance of a Commission release[5] and by publication in the **Federal Register.**[6] No comments were received with respect to the Amendment.

The Commission understands that this pilot is designed to reduce the price parameters used in the Pre-Opening Application. The Commission believes that the reduced price parameters may provide a greater opportunity for participation in primary exchange opening transactions by regional exchange broker-dealers. In addition, the shortened time period after which an inquiring specialist may open a stock in his market may promote the efficiency of the Pre-Opening Application. Therefore, the Commission, having due regard for the purposes of the Act, including the public interest, the protection of investors, the maintenance

[1] The participants include the American, Boston, Midwest, New York, Pacific and Philadelphia Stock Exchanges.

[2] The ITS Plan was first approved on an interim basis in 1978. Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419. Approval on a temporary basis has been extended through January 31, 1983. Securities Exchange Act Release No. 16214 (September 21, 1979), 44 FR 56069.

[3] The ITS Operating Committee includes one member from each ITS participant.

[4] *See* Section 5(b) of the ITS Plan. The Pre-Opening Application enables a specialist on one ITS participant exchange to obtain any pre-opening interest of specialists on other participant exchanges. Currently, a specialist arranging an opening transaction is required to inquire of interest from other specialists whenever he determines that the opening transaction in his market in a stock traded in the ITS will be at a price which is more than one-quarter of a point away from the closing price on the previous trading day. The inquiring specialist is prohibited from opening the stock until not less than five minutes after inquiring of other specialists.

[5] Securities Exchange Act Release No. 17200 (October 7, 1980), 21 SEC Docket 94 (October 21, 1980).

[6] 45 FR 68818 (October 16, 1980).

of fair and orderly markets, and the need to remove impediments to, and perfect the mechanisms of, a national market system, has declared the Amendment effective as of the date of this release.

It is therefore ordered, Pursuant to Section 11A of the Act, that the above-mentioned proposed Amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-37782 Filed 12-4-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21813; 70-6388]

Arkansas-Missouri Power Co.; Proposed Issuance and Sale of Short-Term Bank Notes

December 1, 1980.

Notice is hereby given that Arkansas-Missouri Power Company ("Arkansas-Missouri"), 405 West Park Street, Blytheville, Arkansas 72315, a wholly-owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated January 11, 1980 (HCAR No. 21390), Arkansas-Missouri was authorized to issue and sell to the First National Bank in Little Rock, Arkansas, for the account of participating banks, unsecured promissory notes in an amount not to exceed $5,000,000 at any one time outstanding and maturing no later than January 11, 1981.

Arkansas now proposes to issue and sell to First National Bank in Little Rock, Arkansas, for the account of participating banks, unsecured promissory notes payable not more than 270 days from the date of issuance and which may be renewed from time to time but to mature not later than one year from the effective date of the Commission's supplemental order herein. The promissory notes will bear interest, payable quarterly and at maturity, on the unpaid principal amount thereof at a rate per annum equal to the commercial loan rate of Chemical Bank, New York, New York, from time to time in effect on borrowings having a 90-day maturity by responsible and substantial corporate borrowers. Arkansas-Missouri will not be required to maintain any compensating balances with, or pay any commitment fee to, any of the participating banks in connection with the proposed transactions. The notes will, at the option of the company, be prepayable in whole or in part at any time without premium of penalty.

The proposed borrowings will be in addition to other bank borrowings by the company from (1) First National Bank in Little Rock, Arkansas, which total $5,500,000 as of the date of the post-effective amendment and may not exceed $5,500,000 at any one time outstanding, and (2) Worthen Bank & Trust Company, Little Rock, Arkansas, which total $5,500,000 as of the date of the post-effective amendment and may not exceed $5,500,000 at any one time outstanding.

It is stated that the net proceeds to be received by Arkansas-Missouri from the issuance and sale of the proposed notes will be applied to the payment at or prior to maturity of the bank borrowings previously authorized in this proceeding (estimated to total $3,000,000 in principal amount at the time of the supplemental order herein), to its construction program, and to other lawful corporate purposes. It is also stated that in connection with the proposed consolidation of the electric properties of Arkansas-Missouri with those of Arkansas Power & Light Company ("AP&L"), an associate company, AP&L, upon acquiring all the outstanding shares of the common stock of the company from Middle South Utilities, Inc., will thereafter cause Arkansas-Missouri to be liquidated and dissolved and its assets to be distributed to AP&L (File No. 70-6326). In conjunction with these transactions, and at the time of the liquidation of Arkansas-Missouri and the distribution of its assets to AP&L, AP&L will assume all the company's obligations and liabilities, including the company's then outstanding short-term indebtedness represented by notes payable to banks.

It is further stated that no special or separable fees or expenses are expected to be incurred by the company in connection with the issuance and sale of the notes. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested persons may, not later than December 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment to the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will reveive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-37783 Filed 12-4-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21808; 70-6525]

Consolidated Natural Gas Co. et al.; Proposal To Make Loans to Residential Heating Customers To Finance Home Insulation Installment and To Acquire Promissory Notes

December 1, 1980.

In the matter of Consolidated Natural Gas Company, 30 Rockefeller Plaza, New York, New York 10020, and The East Ohio Gas Company, The River Gas Company, West Ohio Gas Company.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, The East Ohio Gas Company, The River Gas Company and West Ohio Gas Company (collectively referred to

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[7] *See* Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2); 17 CFR 200.20-3(a)(29).

as "the subsidiaries") all of which are wholly-owned subsidiaries of Consolidated, have filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 9 and 10 of the Act and Rule 40 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application for a complete statement of the proposed transaction.

The subsidiaries seek authorization to conduct, in accordance with the law of the State of Ohio, a residential insulation financing program ("Program") and to acquire unsecured installment promissory notes from residential gas space heating customers pursuant to the Program. Under the Program, each subsidiary will lend to each of their respective qualified residential heating customers amounts up to $750 for installation of insulation of the customer's single or double family gas heated residence if a financial institution listed as an institution that will finance such installations denies a loan to any such customers. Financing for the program will be derived from internally generated funds.

It is stated that the terms of the loans under the proposed Program shall not exceed 24 months. The interest charged on such loans will not exceed a rate equal to 4% in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank, Fourth Federal Reserve District, at the time the loan is executed. The discount rate on 90-day commercial paper in effect on October 30, 1980 at the Federal Reserve Bank, Fourth Federal Reserve District, was quoted at 11%. At the end of the first year, the subsidiary shall set the rate of interest charged so that revenues derived therefrom will equal the costs of administering the Program. It is stated that if costs exceed 4% over the commercial paper discount rate, the excess will be assumed by the subsidiary. When costs are less than the revenues recovered from interest charges, customers who had loans outstanding during that year will be credited an amount in proportion to their respective loans and interest payments during that year. The credit will be applied against the customer's unpaid balance or bill the following year. Repayment within 90 days will be treated as cash and will incur no interest.

The maximum amount of loans outstanding at any one time from all the subsidiaries during the years 1981, 1982 and 1983 shall not exceed $9,500, $19,000 and $28,500 respectively. The maximum aggregate amounts of loans outstanding during the period 1981 through December 31, 1983 at any one time for each individual subsidiary will be as follows:

Applicants	Amount		
	1981	1982	1983
East Ohio	$5,000	$10,000	$15,000
River	2,250	4,500	6,750
West Ohio	2,250	4,500	6,750

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $1,100 including charges for services of Consolidated Natural Gas Service Company, Inc. estimated at $1,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 26, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shoduld be served personally or by mail upon the applicants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted, as provided in Rule 23 of the general rules and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A Fitzsimmons,

Secretary.

[FR Doc. 80-37785 Filed 12-4-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11467; 812-4734]

Empire State Municipal Trust, et al.; Filing of Application for an Order To Permit an Offer of Exchange for an Exemption From the Provisions

December 1, 1980.

In the matter of Empire State Municipal Exempt Trust, Glickenhaus & Co., Lebenthal & Co., Inc., and Mosely, Hallgarten, Estabrook & Weeden Inc., c/o Glickenhaus & Co., 522 Fifth Avenue, New York, New York 10036.

Notice is hereby given that Empire State Municipal Exempt Trust, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and its sponsors, Glickenhaus & Co., Lebenthal & Co., Inc., and Mosely, Hallgarten, Estabrook & Weeden Inc. (collectively, "Sponsors") (hereinafter collectively referred to as "Applicants") filed an application on September 10, 1980, and amendments thereto on September 30, 1980, and November 25, 1980, requesting an order of the Commission (1) pursuant to Section 11 of the Act permitting exchange of units of series of the Trust for units of other such series at net asset value plus a fixed and reduced sales charge per unit, pursuant to an exchange option ("Plan"), and (2) for an order pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Section 22(d) of the Act to the extent necessary to permit such exchanges. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Trust is comprised of Sixteen Series of similar but separate unit investment trusts organized under the laws of the State of New York. According to the application, the first series of the Trust was designated Municipal Exempt Trust, New York Exempt Series 1 and the second and third series were designated Municipal Exempt Trust, New York Series 2 and New York Series 3, respectively, and for these three series Glickenhaus & Co. acts as sole sponsor. Applicants further state that after the above three series had been created, the name of the Trust for all future series was changed to Empire State Municipal Exempt Trust and each succeeding series has been designated by a different series number commencing with Series 10. According to the application, the primary objectives of the Trust are tax-exempt income and conservation of capital through an investment in a diversified portfolio of tax-exempt bonds issued by or on behalf

of the State of New York and counties, municipalities or political subdivisions thereof or issued by certain United States territories or possessions and their public authorities so that the interest on these securities will be exempt from all Federal, New York State and New York City income tax under existing law.

Each series of the Trust is governed by the provisions of such Series' Trust Agreement and Indenture. Applicants state that, for each series of the Trust, the Sponsors acquire a portfolio of securities which is deposited with one or more trustee banks in exchange for certificates representing an undivided interest in the deposited portfolio. The units are then offered to the public at a public offering price which is based on the offering prices of the underlying portfolio securities, plus a sales charge. The application states that the sales charge is currently 4½ percent of the public offering price on sales of fewer than 500 units.

The Applicants state that, while not required to do so, the Sponsors maintain a secondary market for the units of each series of the Trust at prices based on the offering side evaluation of the underlying portfolio securities then in effect.

The sponsors propose to offer, subject of the conditions described below, the Plan to unitholders of the various series of the Trust. According to the application, the purpose of the Plan is to provide investors in each of the series of the Trust a convenient means of transferring interests as their investment requirements change. Applicants state that the Sponsors contemplate holding the Plan open at all times, although they reserve the right to modify, suspend or terminate the Plan at any time without notice to unitholders. It is intended that the Plan will operate as follows: A unitholder wishing to dispose of his units in a series for which a secondary market is being maintained will have the option to convert his units into units of any other series of the Trust for which units are available for sale in the secondary market and the Sponsors are participating in the Plan. When a unitholder notifies the Sponsors of his desire to participate in the Plan, the Sponsors will deliver a current prospectus for series of the Trust which the Sponsors have available as a result of secondary market acquisitions and in which the unitholder has indicated an interest. The unitholder may then select the series into which he desires his investment to be converted. A conversion transaction pursuant to the Plan will operate in a manner essentially identical to any secondary market transaction except that the Applicants propose to allow a reduced sales charge in a transaction under the Plan. According to the application, at the present time units of the Trust are repurchased by the Sponsors at prices based on the aggregate offering side evaluation of the underlying securities in the portfolio of the series and are resold at a public offering price based on the offering side evaluation of the underlying securities plus a sales charge of 4½% on purchases of fewer than 500 units. Applicants further state that, while it is not presently contemplated that unitholders would be permitted to exchange their units into units of other series which are available during the initial offering period, the Sponsors may at some future date permit such exchanges. Applicants also state that the Sponsors may change the repurchase price to a per unit price based on the aggregate bid side evaluation of the underlying portfolio securities of a series and resell them at that price plus a specified sales charge. Applicants further state that in the event the repurchase price is changed to a per unit price based on the aggregate bid side evaluation of the underlying portfolio securities of a series the Sponsors will not permit conversions of units pursuant to the Plan to be made into units of other series which are available during their initial offering period.

Applicants propose to sell units pursuant to the Plan at the repurchase price as paid by Sponsors, plus a fixed change of $15.00 per unit except for unitholders of a series with a sales charge less than the sales charge of the series into which they desire to convert. In such instances, according to the application, unitholders who have held their units for a period of less than six months would have to pay a sales charge based on the greater of $15.00 or an amount which together with the sales charge paid in connection with the purchase of the units being exchanged equals the sales charge of the series into which the exchange is being made. The application further states that conversion transactions will be effected only in whole units. Under the Plan unitholders would not be permitted to make up any difference between the amount representing the units being submitted for conversion and the units of the new series being acquired. To illustrate, a holder of five units of a series in the Trust with an offering side evaluation of $1,100 may seek conversion into units of a series with an offering side evaluation of $900. The unitholders; units will yield $5,500 which amount may be invested in units of the other series. Should five units of the other series be purchased, the charge would be $4,575 ($4,500 for the units and a $75 sales charge). The remaining $925 would be retuned to the unitholder in cash.

The application states that the proposed fixed, reduced sales charge of $15 rather than the customary 4½% sales charge for regular and secondary market sales is proposed by the Sponsors as a result of certain cost savings; which reduction, in the judgment of Applicants, would be beneficial to investors. According to the application, a person desiring to dispose of units of one series and acquire units of another series may do so for a number of reasons, such as a change in investment goals or requirements. Thus, it is likely, according to Applicants, that there will be a continuing need to assess an investor's individual financial position and in all probability the account executives of the Sponsors will actively participate in counseling the investor as to the proper course of action to follow considering all of the relevant investment factors involved. However, Applicants assert that since the investor is an existing customer whose essential investment needs have previously been identified, some transactional savings will be produced. Further, Applicants contend that as a result of the fact that all the series of the Trust are very similar investment vehicles, and exchanging unitholder may require less advice than if he were acquiring an interest in an entirely different kind of investment. Applicants state that they believe that the reduced sales charge of $15 is a reasonable and justifiable expense to be allocated for the professional assistance contemplated in connection with the conversion transaction. Applicants argue that this sales charge compares favorably with the regular sales charge applicable to the sale of units in the primary and secondary market. According to the Applicants, the proposed fixed, reduced sales charge should cover reasonable costs related to the conversion of units under the Plan and yet give participants an opportunity to share in cost savings.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of Section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that is shall be unlawful for any registered open-end company or any principal underwriter for such a company to

make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price describe in the prospectus. The sales charge described in the pospectuses of each of the Series of the Trust for effecting regular secondary market purchase and sale transactions is greater than the sales charge which will be applicable to transactions under the Plan. Rule 22d–1 under the Act permits certain variations in sales charges, none of which it is alleged will be applicable to transactions under the Plan.

Section 6(c) provides, in pertinent part, that the Commisison, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of the investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 26, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements therof.

For the Commission, by the Divison of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–37786 Filed 12–4–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21812; 70–6530]

Gulf Power Co.; Proposed Acquisition of Transmission Line

December 1, 1980.

Notice is hereby given that Gulf Power Company ("Gulf"), 75 North Pace Boulevard, P.O. Box 1151, Pensacola, Florida 32520, a public-utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Gulf proposes to acquire from Florida Power Corporation ("Florida"), a non-affiliated Florida corporation, a portion of a certain 230KV transmission line (115KV operated) located in Bay County, Florida. The affected portion of the transmission line, which is a facility for local distribution of electric power being located beyond the point of interconnection of the systems of Gulf and Florida, is approximately 0.91 mile long. Gulf is to pay a purchase price of $73,530 in cash for the transmission line. The depreciated value of such property is $34,284.

Such transmission line lies between an existing Gulf substation and an interconnection with Florida, and its purchase is necessary to maintain Gulf's territorial integrity. Gulf proposes to utilize such transmission line for a future 115KV loop between two of Gulf's existing substations.

It is stated that the fees and expenses to be incurred in connection with the proposed acquisition are estimated not to exceed $3,000 and that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested persons may, not later than December 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–37787 Filed 12–4–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 11468; 812–4752]

Monarch Life Insurance Co. et al.; Application for an Order Approving Certain Offers of Exchange

December 1, 1980.

In the matter of Monarch Life Insurance Company, and, Variable Account A of Monarch Life Insurance Company, 1250 State Street, Springfield, Massachusetts 01133.

Notice is hereby given that Monarch Life Insurance Company ("Monarch") and Variable Account A of Monarch Life Insurance Company ("Variable Account A"or "Account"), as issuers of Monarch's Variable Life Insurance Policy funded by Variable Account A ("VLI Policy"), filed an application on October 24, 1980 for an order of the Securities and Exchange Commission ("Commission") approving certain offers of exchange of Monarch and Variable

Account A (collectively known as "Applicants"), pursuant to Sections 11(a) and 11(c) of the Investment Company Act of 1940 ("Act"). All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein which are summarized below.

Monarch is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts, with its principal office located in Springfield, Massachusetts. Monarch is a wholly-owned subsidiary of Monarch Capital Corporation, a Delaware corporation organized in 1968 as a holding company.

Monarch plans to issue its VLI Policy through a separate account, Variable Account A. Pursuant to a resolution of the Monarch Board of Directors adopted on March 31, 1980, Variable Account A was established by Monarch under Section 132G of chapter 175 of the Massachusetts General Laws. Variable Account A will be maintained as a unit investment trust class of investment company within the meaning of Section 4(2) of the Act. All assets held in Variable Account A will be used to purchase shares at net asset value issued by the Merrill Lynch Investment Series Fund, Inc. ("Series Fund"). Initially, there will be five investment divisions within the Account, each of which will invest ony in the shares of a single mutual fund portfolio of the Series Fund.

The Series Fund is organized as a series company within the meaning of Section 18(f)(2) of the Act and Rule 18f-2 thereunder. The Series Fund will receive advice with respect to the investments of each of its portfolios from Merrill Lynch Asset Management, Inc. ("MLAM"), which will provide administrative services and investment advice and make all investment decisions for the Series Fund. MLAM, a subsidiary of Merrill Lynch & Co., Inc., is a registered investment adviser under the Investment Advisers Act of 1940.

The Applicants state that the VLI Policy is designed to provide lifetime insurance coverage to the insured; it also may be surrendered for its net cash value while the insured is living. The death benefits and cash values under a given Policy will vary based on investments made in Variable Account A. The death benefit may increase or decrease on each policy anniversary but it will never decrease below a guaranteed minimum amount set forth in the Policy. A Policy's cash value may increase or decrease on any day and no minimum amount of cash value is guaranteed.

In the application for a VLI Policy, the policyowner will designate how the net premium is to be allocated among the investment divisions of Variable Account A. No less than 10% of the net premium may be allocated to any division selected.

The amount allocated to Variable Account A with respect to each Policy will equal the annual premium for a standard risk Policy less deductions for "sales load," state premium taxes, annual administrative expenses, and risk charges. There will be an additional charge made in the first policy year to cover administrative expenses to issue a Policy.

As set forth in the VLI Policy, the policyowner may change the allocation of funds supporting the existing investment base of the policyowner's VLI Policy from any one or more of the investment divisions of Variable Account A investing in corresponding portfolios of the underlying Series Fund to any other of the investment divisions of Variable Account A. A policyowner may request this reallocation at any time, but not more than twice during each policy year. Such change will take effect as of the close of business on the day notice is received, provided no premiums are overdue. Each reallocation will be based upon the value of the Policy's total investment base and the net asset values of the underlying mutual fund portfolios at the close of business on the day the reallocation request is received.

Section 11(a) of the Act makes it unlawful for any registered open-end investment company or principal underwriter therefore to make an offer to the holder of a security of such company or of any other open-end investment company to exchange his or her security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

The Applicants argue that, although Variable Account A is a unit investment trust, they do not believe exercise of the reallocation privilege involves the exchange of securities of a unit investment trust for the securities of any other investment company. The Applicants state that in economic reality, the reallocation privilege involves an exchange at net asset value between two or more of the underlying portfolios of the Series Fund, which is a registered open-end company. The policyowner is not being offered the opportunity to make an exchange of a VLI Policy (which is the unit investment trust security) for an interest in another investment company. The Applicants state that only one unit investment trust, Variable Account A, is involved and that the Account will remain the funding vehicle for the Policies throughout these reallocations. In all events, the ownership of the Series Fund shares which are involved will always remain with Variable Account A. The Applicants further state that whatever "transaction" or "exchange" that might be said to take place between one or more of the underlying portfolios of the Series Fund will have no economic significance to the policyowner apart from the change in the underlying shares of the Series Fund used to support the Policy's total investment base.

Nevertheless, in the event Section 11(a) of the Act may be considered applicable by virtue of Section 11(c), Applicants are requesting approval of the Commission, pursuant to Sections 11(a) and 11(c) of the Act, to the extent necessary to enable Applicants to offer policyowners the opportunity to reallocate the funds supporting their Policies.

The Applicants assert that none of the dangers or any of the abuses for which Section 11 of the Act was enacted to prevent would be present in the reallocation transaction. The Applicants state that the reallocation privilege is equitable to all policyowners. It is available to all policyowners on an entirely voluntary basis. The rights of policyowners under the VLI Policy will be unaffected by the exercise of this reallocation privilege.

The Applicants state that the reallocation of funds will be at net asset value without the imposition of any charge, sales load, or other fee. No remuneration will inure to Monarch, Variable Account A, or the Series Fund upon the reallocation transaction. The Applicants further state that the reallocation provision of the VLI Policy provides policyowners with greater flexibility to adjust the underlying investment base of the VLI Policy in accordance with their perception of the changing economic climate. The Applicants assert that the reallocation privilege is consistent with, and equivalent to, the protections provided by Section 11 of the Act, and that it is appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 26, 1980 at 5:30 p.m., submit to the Commission in writing a request for hearing on the application, accompanied by a statement of the nature of his or her interest, the reasons for such request, and issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed to: George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following December 26, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-37788 Filed 12-4-80; 8:45 am]

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[Release No. 21810; 70-6516]

Monongahela Power Co. et al.; Proposed Issuance and Sale of Short-Term Notes to Banks and Commercial Paper to Dealer; Request for Exception From Competitive Bidding

December 1, 1980.

In the matter of Monongahela Power Company, 1310 Fairmont Avenue Fairmont, West Virginia 26554; The Potomac Edison Company, Downsville Pike, Hagerstown, Maryland 21740; West Penn Power Company, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601.

Notice is hereby given that Monongahela Power Company ("Monongahela"), The Potomac Edison Company ("Potomac"), and West Penn Power Company ("West Penn"), each a wholly-owned electric utility subsidiary of Allegheny Power System, Inc. ("Allegheny"), a registered holding company, have filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 (a) (5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Monongahela, Potomac, and West Penn propose to issue, reissue, sell and renew short-term notes to banks and commercial paper to provide short-term funds for the period from January 1, 1981 through June 30, 1982. The notes and commercial paper will be issued, reissued, sold and renewed from time to time as funds may be required prior to June 30, 1982, provided that no such notes or commercial paper will mature after December 31, 1982. Applicants request that, from the date of the granting of the application filed in this matter to June 30, 1982, the exemption from the provisions of Section 6(a) of the Act afforded to each by the first sentence of Section 6(b) thereof be increased to the extent necessary to permit the issuance and sale of notes to banks and commercial paper to dealers in commercial paper in an aggregate amount not to exceed $58,000,000 in the case of Monongahela, $57,000,000 in the case of Potomac, and $94,000,000 in the case of West Penn. These amounts include any notes which may remain outstanding under the Commission's order dated June 20, 1979 (HCAR No. 21110) and represent the maximum amount of notes for which authorization is presently sought. Changes may be made in the maximum amount of authorized outstanding notes after the filing of a post-effective amendment setting forth such changes and upon further order of this Commission.

As of August 31, 1980, Monongahela and Potomac had short-term debt outstanding of $7,500,000 and $9,500,000, respectively. West Penn had no short-term debt outstanding. It is stated that as of December 31, 1980, Monongahela, Potomac and West Penn will have approximately $21,500,000; $7,000,000; and $7,000,000 of short-term debt outstanding, respectively, pursuant to the Commission's order dated June 20, 1979 (HCAR No. 21110), assuming the sale of $60 million of Pollution Control Notes by West Penn and of $25 million aggregate par value of Preferred Stock by Potomac prior to December 31, 1980. No additional commercial paper or notes to banks can be issued pursuant to that order after December 31, 1980.

Each note payable to a bank will be dated as of the date of that borrowing, will mature not more than two hundred-seventy (270) days after the date of issuance or renewal thereof, will bear interest at the prime or comparable interest rate, in effect at the time of issuance at the bank from which the borrowing is made or the rate in effect at that bank from time to time, and will be prepayable at any time without premium or penalty. The words "Comparable interest rate of the bank from which the borrowing is made" shall include fixed or floating rates computed on the basis of differentials over or under nationally published rates of interest such as the rate for "federal funds" which result in an overall interest rate less than the prime rate in effect at such banks. The bank loans will be obtained from seven domestic banks pursuant to established lines of credit. The aggregate maximum principal amount of borrowings for all companies outstanding at any one time shall be $240,000,000. The maximum amount of such borrowings outstanding at any one time for Monongahela, Potomac and West Penn will not, when taken together with any commercial paper outstanding, be in excess of $58,000,000, $57,000,000, $94,000,000 respectively. These amounts include any notes or commercial paper which may be outstanding pursuant to the Commission's order of June 20, 1979 (HCAR No. 21110). Balances are maintained by one or more of such companies at all of these banks to meet regular operating requirements as well as, when necessary, in connection with these lines of credit. It is stated that compensating cash balance requirements are generally either on the basis of a percentage of the line of credit extended by such bank not to exceed 10%, or a higher percentage of notes outstanding not to exceed 20%, whichever is greater, or a percentage of the line of credit not to exceed 10% plus a percentage not to exceed 10% of notes outstanding in each case on an average annual basis. If such balances were maintained solely to fulfill compensating balance requirements for borrowings, the effective interest cost of issuing and selling the notes would be no more than 20.312% based on a prime commercial credit rate of 16.25%.

Applicants will file with the Commission by amendment (i) the names of any additional banks to which it proposes to issue and sell notes and (ii) in the event notes are to be issued

and sold to any bank in amounts in excess of the amount indicated for such bank in the filing, such excess amount, and in either case, appropriate information as to compensating balances in connection therewith. No notes will be issued to such unidentified banks or in such excess amounts prior to the issuance by the Commission of a supplemental order in connection therewith.

Certain of the banks have offered to substitute fees for, or to be used in conjuction with lower compensating balances than those set forth above. The fee arrangements vary. In some cases fees equal to a specific percentage of the prime commercial rate (note to exceed 8½% of the prime commercial rate) are involved, while in another instance the arrangement provides that balances be maintained equal to 5% of the line of credit with an additional fee of 2½% of prime payable. The fee arrangements would not be utilized unless the effective cost thereof is less than the compensating balance arrangement in effect at the bank at that time. The proposed fee arrangements produce and effective interest cost of issuing and selling the notes of a maximum of 19.437% based on a prime commercial rate of 16.25% rather than the maximum effective interest cost of 20.312% resulting from meeting the compensating cash balance requirements set forth above.

The commercial paper will be in the form of promissory notes in denominations of not less that $50,000 nor more than $5,000,000; will be of varying maturities, with no maturity more than 270 days after the date of issue; and will not be prepayable prior to maturity. Each of the companies has designated A.G. Becker & Co. as its commercial paper dealer. The commercial paper notes will be sold by each of the companies directly to the dealer at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity sold by issuers to dealers in commerical paper. The dealer may reoffer the commercial paper at a discount rate of ⅛ of 1% annum less than the discount rate to Monogahela, Potamac or West Penn. Commercial paper notes may be issued if (1) the interest cost thereof is equal to or less than the effective interest cost at which such company could borrow the same amount from the Banks at that time or (2) such company cannot at that time borrow the same amount for the same period of time from the Banks. The dealer will reoffer the commercial paper notes to not more than 200 of its commercial and industrial customers, identified and designated in a list for each company prepared in advance. Such customers include commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, colleges and universities, financial companies and non-financial corporations which invest funds in commercial paper. It is expected that the commercial paper notes will be held by the dealer's customers to maturity, but if the customers wish to resell prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase the notes and reoffer them to others on said list.

Exemption from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5) thereof, is requested for the proposed issuance and sale of commercial paper since it is not practicable to invite competitive bids for commercial paper and current rates for commercial paper for prime borrowers such as applicants are published daily in financial publications. Applicants also request authority to file certificates under Rule 24 with respect to the issuance and sale of commercial paper on a quarterly basis.

It is stated that the proceeds from the issuance and sale of the proposed short-term borrowings will be used by each company to operate its business as an electric public utility, including the financing of its construction program and acquistion property. The estimated gross construction expenditures for 1981 and 1982 are estimated to total between $115 and $127 million in the case of Monogahela, between $118 and $129 million in the case of Potomac, and between $258 million and $275 million in the case of West Penn. Unless otherwise authorized by this Commission, any short-term debt outstanding hereunder after June 30, 1982, will be retired by each of such Companies having such short-term debt outstanding not later than December 31, 1982, from internal cash resources, or sale of permanent debt, preferred stock or common stock or such other securities as the Commission and other regulatory authorities having jurisdiction may authorize.

It is stated that the fees expenses to be incurred in connection with the proposed transactions are estimated to be approximately $24,400, including rating fees aggregating approximately $8,000 for each company. It is stated that the State Corporation Commission of Virginia has jurisdiction over the issuance and sale by Potomac of the short-term debt. It is further stated that no other state commission and no federal commission, other that this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 26, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A Copy of such request should be served personally or by mail upon the applicants at the above-stated addresses, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-37789 Filed 12-4-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21807; 70-6097]

System Fuels, Inc. et al. Proposal by Fuel Procurement Subsidiary to Finance Exploration for, Development, Production, and Procurement of Fuel of Various Types; Proposal by Such Subsidiary To Make Borrowings From Its Public Utility Parent Companies

November 28, 1980.

In the matter of System Fuels, Inc., Noro Plaza, 666 Poydras, New Orleans, Louisiana 70130; Arkansas Power & Light Company, First National Building, Little Rock, Arkansas 72203; Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174; Mississippi Power & Light Company, Electric Building, Jackson, Mississippi 39205; New Orleans Public Service Inc.,

317 Baronne Street, New Orleans, Louisiana 70112.

Notice is hereby given that System Fuels, Inc ("SFI"), a fuel procurement subsidiary of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service, Inc. (collectively the "Operating Companies"), each a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed post-effective amendments to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(3) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By order dated December 28, 1979 (HCAR No. 21367) in this matter SFI was authoirzed to make long term borrowings of up to $117,000,000 through December 31, 1980 from the Operating Companies in order to finance, in part, SFI's fuel procurement, storage and transporation activities. It is estimated that pursuant to such authorization $54,500,000 will be outstanding on December 31, 1980 SFI proposes to enter into an amendment to its Loan Agreement, dated January 4, 1978 with the Operating Companies, as previously amended on January 1, 1979 and January 1, 1980. The Loan Agreement, as it is proposed to be amended, will provide for additional borrowings in 1981 of up to $207,000,000 through December 31, 1981. Any amounts outstanding as of December 31, 1980 will be converted into loans under the Loan Agreement as it is to be amended. Consequently, the amount of borrowings which have been, or are proposed to be, made under the Loan Agreement through December 31, 1981 is estimated to be $261,500,000, which amount will be adjusted to reflect the actual amount of loans outstanding at December 31, 1980.

It is presently comtemplated that additional net capital of $47,000,000 will be required for SFI's fuel procurement program during 1981, as follows:

[In thousands of dollars]

Fuel supply programs	Amount
A. Gas and oil exploration, development and production	
B. Uranium exploration	$8,100
C. Nuclear fuel procurement	24,400
D. Coal Procurement	3,700
E. Fuel oil program:	
1. Fuel oil procurement	15,200
2. Fuel oil storage and handling	1,400
Total capital requirements	52,800
Less: Depreciation and Deferred taxes	5,800
Net capital requirement	47,000

The uranium exploration program includes $5,200,000 in connection with the continuation of existing arrangements with three exploration companies and $2,900,000 for carrying costs, including interest charges and general and administrative expenses relating to the uranium exploration program to be capitalized.

The $24,400,000 budgeted for nuclear fuel procurement and processing will supplement short-term borrowings of up to $60,000,000 authorized by the Commission's order dated October 31, 1978 (HCAR No. 20753).

The $3,700,000 to be allocated to SFI's coal program will involve expenditures for carrying costs, consulting services, and overhead expenses to be capitalized in connection with the coal supply arrangement with North Antelope Coal Company.

To assure the availability to the Operating Companies of an adequate supply of fuel oil it will be necessary to have an inventory on hand at January 1, 1981 and December 31, 1981 of 6,500,000 bbls. and 6,100,000 bbls., respectively. During the ensuing twelve months, the inventory level will vary because of seasonal factors and other conditions. However, due to an increase in cost, the inventory at December 31, 1981 is expected to be worth approximately $162,500,000 compared to an estimated worth of approximately $142,100,000, at January 1, 1981. Also SFI anticipates expenditures of $1,400,000 in 1981 for the construction of an additional storage tank and to make certain improvements to the existing tanks, docking and unloading facilities. Of the total $163,900,000 to be invested in its oil procurement program during 1981, SFI expects to finance $100,000,000 through borrowings under the Loan Agreement dated as of May 28, 1980 among Clipper Oil Corporation, SFI and the Operating Companies, as authorized in the Commission's order of May 22, 1980 (HCAR No. 21584). A significant portion of the balance is expected to be financed through borrowings under SFI's proposed Loan Agreement with Citibank, N.A., (File No. 70-6519). Although the Citibank Loan Agreement may be used by SFI for its general fuel supply purposes, it has been assumed, for the purposes hereof, that $47,300,000 of borrowings thereunder will be used for SFI's fuel oil program, thereby resulting in a net capital requirement of $16,600,000.

Potential borrowing requirements of SFI during 1981 include up to $60,000,000 for payment of commercial paper and $100,000,000 for payment of borrowings from Clipper Oil Corporation and a net amount of $47,000,000 for SFI's fuel supply programs. SFI will partially finance its nuclear materials and processing services supply program during 1981 by the issuance of its commercial paper notes backed by Aetna's Bond of Indemnity and its fuel oil program in 1981 by borrowings from Clipper Oil Corporation. SFI has retained the right to cancel the program with Aetna at any time should it become economically disadvantageous. In addition, the program may be terminated upon the occurrence of certain events. SFI currently estimates that the maximum amount of notes or obligations to Aetna at any one time outstanding during 1981 will total $60,000,000. SFI seeks authority to make borrowings under the Loan Agreement, if necessary, in 1981, in an amount sufficient to effect repayment of its borrowings or reimbursement of Aetna. In addition, SFI will endeavor to extend, renew or otherwise refinance its borrowings from Clipper Oil Corporation under a loan agreement among SFI, Clipper Oil Corporation and the Operating Companies, which loan agreement, unless renewed will terminate on May 28, 1981.

If such loan agreement is not extended or renewed, or no refinancing is available, SFI will need to effect $100,000,000 of borrowings under the loan agreement in order to pay these borrowings at maturity. SFI also states that it needs the assurance that borrowing capacity is available immediately to meet contingencies which might arise in connection with leasing and other transactions previously entered into.

SFI proposes to enter into an amendment to the Loan Agreement with the Operating Companies pursuant to which SFI would be authorized to make borrowings, which will mature on December 31, 2006, from the Operating Companies, from time to time through December 31, 1981 in an aggregate amount not to exceed, at any one time, the sum of $207,000,000 and the amount to be outstanding at December 31, 1980 under the existing Loan Agreement, currently estimated to be $54,500,000, which amount will be converted into loans under the amended Loan Agreement. Such borrowings would be

in addition to the $26,500,000 of outstanding borrowings authorized by the Commission by order dated December 17, 1971 (HCAR No. 17400) and the $13,000,000 of outstanding borrowings authorized by Commission Orders dated December 17, 1973 (HCAR No. 18221) and December 24, 1975 (HCAR No. 19314) and December 30, 1976 (HCAR No. 19835).

Under the Loan Agreement, each Operating Company will agree to make loans to SFI until December 31, 1981 in aggregate principal amounts at any one time outstanding up to but not exceeding the following amounts:

[In thousands of dollars]

Operating company	Commitment
Arkansas Power & Light Co	$83,870
Louisiana Power & Light Co	111,145
Mississippi Power & Light Co	42,384
New Orleans Public Service Inc	24,100
Total	261,500

The amounts of the commitments include an assumed $54,500,000 to be outstanding under the 1980 Loan Agreement at December 31, 1980 and will vary to reflect the loans acutally outstanding at that time. Each Operating Company's commitment to make additional loans in 1981 is equal to an amount in such proportion as its kilowatt-hour sales for the twelve months ended September 30, 1980 bear to the total kilowatt-hour sales of the Operating Companies for that period, computed in both cases by including sales to rural electric cooperatives and municipalities but excluding sales to other public utilities.

The obligation of SFI to repay the loans made by each Operating Company under the Loan Agreement shall be evidenced by the promissory note ("Note") of SFI in a principal amount equal to such Operating Company's commitment and payable to the order of such Operating Company on December 31, 2006. SFI will authorize each Operating Company to endorse on the reverse side of the Note payable to such Operating Company an appropriate notation evidencing its pro rata share of the loans made to SFI under the Loan Agreement and each prepayment and payment of principal with respect to such loans. Each loan will be made pro rata according to the commitments. Simultaneously with the delivery of the Notes and their appropriate notation for borrowings outstanding at December 31, 1980 under the existing Loan Agreement, the Notes issued under the existing Loan Agreement which evidence such borrowings will be returned to SFI and cancelled. Each Note will bear interest on the unpaid principal balance thereof, adjustable monthly on the first day of each month, at an annual rate for such month equal to the annual rate of interest borne on the last day of the preceding month by the short-term bank borrowings of the Operating Company to which such Note shall have been issued. If on the last day of the month, such Operating Company shall have short-term bank borrowings bearing more than one rate of interest, the highest rate shall apply. If, on the last day of any month, such Operating Company shall not have any short-term bank borrowings, the prime commercial rate generally charged by commercial banks in New York City on such day to responsible and substantial corporate borrowers shall apply. The loans will be prepayable at any time in any amount without premium or penalty. Each prepayment on account of the unpaid principal balance of the Notes will be made by SFI to the Operating Companies pro rata in accordance with their respective percentage share of the commitments.

SFI states that it will borrow from external sources in lieu of making borrowings from the Operating Companies when effecting such external borrowings is more advantageous to SFI and the System under the circumstances at the time. Subject to the receipt of such regulatory approvals from the Commission as may be necessary at the time, it is anticipated that SFI may borrow from banks, insurance companies and other non-affiliated lenders and enter into specific arrangements for financing.

The rights and obligations of the parties under the Loan Agreement will be subject to certain restrictions set forth in the participation agreement with Aetna and the loan agreement with Clipper Oil Corporation. These restrictions relate principally to the payment or prepayment by SFI of its indebtedness to the Operating Companies during the terms of those agreements. In carrying out its financing program for 1981, SFI represents that it will at all times maintain the aggregate of its capital stock, surplus, and principal amount of its indebtedness to the Operating Companies at an amount equal to at least 35% of SFI's total capitalization.

SFI also requests that its existing authorization be extended through December 31, 1981 for the following:

(1) The Operating Companies, in connection with a transaction in the ordinary course of SFI's fuel supply business and not involving the issuance of a security, to assure any party contracting with SFI that the Operating Companies will, in accordance with their respective shares of ownership of the Common Stock of SFI, take such action as may be appropriate from time to time to keep SFI in a sound financial condition so that it may discharge its obligations under the particular contract; and

(2) To have personnel employed by the other companies in the System perform services for SFI at cost where it is more economical and efficient for such personnel to perform such services.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 22, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-37793 Filed 12-4-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17848; File No. SR-CSE-80-6]

Cincinnati Stock Exchange; Proposed Rule Change; Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on November 17, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Cincinnati Stock Exchange's Statement of the Terms of Substance of the Proposed Rule Change

Effective December 1, 1980, the Executive Committee of The Cincinnati Stock Exchange is revising fees charged for granting extensions of time filed by brokers pursuant to Regulation T of the Federal Reserve Act and Securities and Exchange Commission Rule 15c3-3.

Extension Fees:

(a) $1 per request (Members)

(b) [$2] *$1* per request (Non-Members)

The Cincinnati Stock Exchange's Statement of Basis and Purpose

By action of the Executive Committee on November 7, 1980, the fees charged for granting extensions of time were revised.

Section 6(b)(4) of the Act is the basis for these fees since specified charges are reasonable and equitably allocated to those who avail themselves of such Exchange services.

No comments were solicited from Members nor were any received.

Fees as set forth impose no burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number references in the caption above and should be submitted on or before December 26, 1980. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

December 1, 1980.

[FR Doc. 80-37784 Filed 12-4-80; 8:45 am]

BILLING CODE 8010-01-M

[Release 34-17350; File No. SR-NASD-80-22]

National Association of Securities Dealers, Inc.; Proposed Rule Change; Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on November 25, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The NASD's Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

Section 37 of Article III of the Association's Rules of Fair Practice is redesignated as Section 35. Cross references within the Rules of Fair Practice are changed accordingly.

The NASD's Purpose of Proposed Rule Change

The rule change simply redesignates Section 37 of Article III of the Rules of Fair Practice as Section 35. This will permit the various sections of Article III to be presented in continuous order.

The substance of this section of the Rules of Fair Practice, entitled "Communications with the Public" was approved by the Commission on November 13, 1980, as announced in Exchange Act Release No. 17289.

The NASD's Basis under the Act for the Proposed Rule Change

The Association has authority, under Section 15A of the Act, to adopt and codify rules of fair practice.

Comments Received From Members, Participants or Others on Proposed Rule Change.

No comments were solicited or received with respect to the proposed rule change.

The NASD's Statement on Burden on Competition

Since the proposed rule change involves only an editorial change, the Association envisions no effects on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change as it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 26, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

December 1, 1980.

[FR Doc. 80-37790 Filed 12-4-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17349; File No. SR-PSE-80-22]

Pacific Stock Exchange Inc.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-24, 16 (June 4, 1975), notice is hereby given that on November 17, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE") proposes to amend the forms of Agreement utilized in connection with financing of memberships (XYZ Agreements). The modifications allow use of the Agreements on the equity floors of PSE as well as the options floor and extend the period of time that may be required by PSE for the orderly transfer of business from one person to another.

The Exchange's Statement of Basis and Purpose

The proposed rule change modifies existing XYZ Agreements to allow the use of such Agreements on the Equity Floors of PSE as well as the Options Floor, to extend the period of time PSE can impose to provide for the orderly termination or transfer of business from the applicant back to the person financing the membership from 30 days to 60 days, to remove the requirement that all agreements between the applicant and the person financing the membership be submitted to and approved by PSE, and to simplify and correct certain terms and language contained in the present forms of Agreement.

The proposed rule change is consistent with Section 6(b)(2) of the Securities Exchange Act of 1934 in that it enhances the ability of a registered backer to dealer or natural person associated with a registered broker or dealer to become a member of PSE.

Comments were neither solicited or received with respect to the proposed rule change.

The proposed rule change does not impose a burden on competition.

On or before January 9, 1981, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W. Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 26, 1980.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

December 1, 1980.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-37791 Filed 12-4-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17345; File No. SR-PCC-80-4]

Pacific Clearing Corp.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-24, 16 (June 4, 1975), notice is hereby given that on November 25, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a redesignation of the Rules of Pacific Clearing Corporation ("PCC") to remove the Rules from their current position as Rule XX of the Rules of Pacific Stock Exchange Incorporated ("PSE") and establish them as an independent set of Rules.

Statement of Basis and Purpose

The proposed rule change removes the Rules of PCC from their current position as Rule XX of the Rules of PSE and establishes them as an independent set of Rules. This action has no substantive effect and is, in effect, merely a renumbering of existing Rules.

The proposed rule change is consistent with the purpose of Section 17A(b)(3) of the Securities Exchange Act of 1934 (the "Act") in that it concerns all of the Rules of PCC applicable to standards set out in that Section.

Comments were neither solicited or received with respect to the proposed rule change.

The proposed rule change does not impose a burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Wasington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 26, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

November 26, 1980.

[FR Doc. 80-37792 Filed 12-4-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 04/04-0201]

Carolina Venture Capital Corp., Application for a License To Operate as a Small Business Investment Company

Notice is hereby given the filing of an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), under the name of Carolina Venture Capital Corporation, Suite 109, Sea Pines Executive Office Building, Pope Greenwood Complex, Hilton Head Island, South Carolina 29928, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act), (15 U.S.C. 661 *et seq.).*

The proposed officers, directors and major stockholders are as follows:

Thomas H. Harvey, III, President, Chairman of the Board and 31.818 percent stockholder; P.O. Box 3110, Hilton Head Island, SC 29928

James M. Herring, Esq., Secretary, Director, and 3.78 percent stockholder; P.O. Drawer 5909, Hilton Head Island, SC 29928

Frederick W. Hohage, Vice President, Director, and 15.152 percent stockholder; 2800 S. 25th Avenue, Broadview, IL 60153

Joe Harden Builder, Inc., 15.152 percent stockholder; Pension Plan, Arrow Road, Hilton Head Island, SC 29928

Defined Benefit Trust, 10.50 percent stockholder; P.O. Box 3110, Hilton Head Island, SC 29928

Time Sharing Management Services, Inc., 16.50 percent stockholder; P.O. Box 3110, Hilton Head Island, SC 29928

Mr. Harvey is the holder of the controlling interest in both of the Time Sharing Management Services, Inc. Trust Plans.

The balance of the Applicant's stock will be owned by eight other investors, none of whom will own 10% or more of the Applicant's stock.

The Applicant will begin operations with a capitalization of $510,000 which will be a source of both equity and debt financing to qualified small business concerns in a wide range of industries for normal growth, expansion and working capital.

The Applicant does not intend to use the services of an investment adviser but will provide consulting services to its clients and other small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management and owner, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than December 22, 1980, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Hilton Head Island, South Carolina area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 26, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-37775 Filed 12-4-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1952]

Nebraska; Declaration of Disaster Loan Area

The following 63 counties and adjacent counties within the State of Nebraska constitute a disaster area as a result of physical damage caused by natural disasters as indicated:

County	Natural disaster	Date
1. Antelope	Drought	5/10 to 10/2/80.
2. Blaine	Drought	5/10 to 10/2/80.
3. Boone	Drought	5/10 to 10/2/80.
4. Brown	Drought	5/10 to 10/2/80.
5. Buffalo	Drought	5/10 to 10/2/80.
6. Burt	Drought	5/10 to 10/2/80.
7. Butler	Drought	5/10 to 10/2/80.
8. Cass	Drought	5/10 to 10/2/80.
9. Cedar	Drought	5/10 to 10/2/80.
10. Cherry	Drought	5/10 to 10/2/80.
11. Clay	Drought and insect damage.	5/10 to 10/2/80.
12. Colfax	Drought	5/10 to 10/2/80.
13. Cuming	Drought	5/10 to 10/2/80.
14. Dakota	Drought	5/10 to 10/2/80.
15. Dawes	Drought, insect and disease damage.	5/10 to 10/2/80.
16. Dawson	Drought	5/10 to 10/2/80.
17. Dixon	Drought	5/10 to 10/2/80.
18. Dundy	Drought	5/10 to 10/2/80.
19. Fillmore	Drought, insect damage.	5/10 to 10/2/80.
20. Frontier	Drought	5/10 to 10/2/80.
21. Gage	Drought	5/10 to 10/2/80.
22. Garfield	Drought	5/10 to 10/2/80.
23. Gosper	Drought	5/10 to 10/2/80.
24. Hall	Drought	5/10 to 10/2/80.
25. Hayes	Drought, insect damage.	5/10 to 10/2/80.
26. Hitchock	Drought, insect damage.	5/10 to 10/2/80.
27. Holt	Drought	5/10 to 10/2/80.
28. Hooker	Drought	5/10 to 10/2/80.
29. Jefferson	Drought	5/10 to 10/2/80.
30. Johnson	Drought, insect damage.	5/10 to 10/2/80.
31. Kearney	Drought	5/10 to 10/2/80.
32. Keya Paha	Drought	5/10 to 10/2/80.
33. Lancaster	Drought	5/10 to 10/2/80.
34. Lincoln	Drought, insect damage.	5/10 to 10/2/80.
35. Logan	Drought, insect damage.	5/10 to 10/2/80.
36. Loup	Drought	5/10 to 10/2/80.
37. McPherson	Drought, insect damage.	5/10 to 10/2/80.
38. Madison	Drought	5/10 to 10/2/80.
39. Merrick	Drought	5/10 to 10/2/80.
40. Nance	Drought	5/10 to 10/2/80.
41. Nemaha	Drought, insect damage.	5/10 to 10/2/80.
42. Nuckolls	Drought, insect damage.	5/10 to 10/2/80.
43. Otoe	Drought	5/10 to 10/2/80.
44. Pawnee	Drought, insect damage.	5/10 to 10/2/80.
45. Pierce	Drought	5/10 to 10/2/80.
46. Platt	Drought	5/10 to 10/2/80.
47. Polk	Drought	5/10 to 10/2/80.
48. Red Willow	Drought, insect damage.	5/10 to 10/2/80.
49. Richardson	Drought	5/10 to 10/2/80.
50. Rock	Drought	5/10 to 10/2/80.
51. Sarpy	Drought	5/10 to 10/2/80.
52. Saunders	Drought	5/10 to 10/2/80.
53. Seward	Drought	5/10 to 10/2/80.
54. Sheridan	Drought, insect damage.	5/10 to 10/2/80.
55. Stanton	Drought	5/10 to 10/2/80.
56. Thayer	Drought	5/10 to 10/2/80.
57. Thomas	Drought, insect damage.	5/10 to 10/2/80.
58. Thurston	Drought	5/10 to 10/2/80.
59. Valley	Drought	5/10 to 10/2/80.
60. Washington	Drought	5/10 to 10/2/80.
61. Wayne	Drought	5/10 to 10/2/80.
62. Wheeler	Drought	5/10 to 10/2/80.
63. York	Drought, insect damage.	5/10 to 10/2/80.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 25, 1981, and for economic injury until the close of business on Aug. 24, 1981 at:

Small Business Administration, District Office, 19th and Farnum Streets, 2nd Floor, Omaha, Nebraska 68102

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 24, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-37776 Filed 12-4-80; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 236
Friday, December 5, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will consider an additional item on the subject listed below on Thursday, December 4, 1980, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, DC.

Agenda, Item Number, and Subject

Broadcast—1—Preparations for Second Session of the Region 2 Administrative Radio Conference for AM Broadcasting.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-2218-80 Filed 12-3-80; 10:11 am]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Thursday, December 4, 1980, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item Number, and Subject

Hearing—1—Petition for reconsideration filed by Walton Broadcasting, Inc. in the Tucson, Arizona, KIKX renewal proceeding (Docket No. 20287).

Hearing—2—Petition for partial reconsideration, appeals, and motions for leave to file appeals in the Joplin, Missouri/Pittsburg, Kansas Television renewal proceeding (Docket Nos. 78-81, 82, 83).

Hearing—3—Appeal of the ALJ's denial of Motion to Disqualify Counsel in the Burbank and Pasadena, California AM and FM renewal and CP proceeding (Docket Nos. 20629-30-31 and BC Docket Nos. 79-65-66-67).

Hearing—4—Two applications for review in the Gaithersburg, Maryland new standard broadcast proceeding. (Docket Nos. 21219, 21224 and 21225).

Hearing—5—Application for Review in the Robert J. Lisberger, Jr., Crystal, Minnesota, citizens band license revocation proceeding (PR Docket No. 79-28).

Hearing—6—Application for Review of a final Review Board Decision in the Columbus, Ohio comparative UHF TV proceeding. (Docket Nos. 78-395, 78-396).

Hearing—7—Motion to accept appeal from an interlocutory ruling of Administrative Law Judge in the Columbia, Pennsylvania comparative AM radio proceeding. (Dockets BC 80-99, BC 80-100).

Hearing—8—Application for Return of Texan Broadcasting Company, Inc.'s Application fro a construction permit for channel 19 in Nacogodches, Texas, to Processing Line. (Docket No. BC 80-36).

Hearing—9—Application for review of a Review Board Decision in the Enumclaw, Washington, Section 307(b) proceeding. (Docket Nos. 78-82, 79-83).

Hearing—10—Draft Decision in the KGGM-TV, Albuquerque, New Mexico, renewal proceeding (Docket No. 20540).

General—1—Transfer of Responsibility for Training of Foreign Nationals to the Office of Science and Technology.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: December 2, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-2219-80 Filed 12-3-80; 10:11 am]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 4, 1980, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, D.C.

Agenda, Item Number, and Subject

General—1—*Title:* In the matter of Digital Communications Protocols (General Docket 80-) *Summary:* The Commission will consider protocol conversion issues generic to interconnection of digital communication networks including issues raised by the Commission's *Final Decision* in the Second Computer Inquiry (Docket No. 20828).

General—2—*Title:* Petitions requesting extension or waiver of the January 1, 1981 compliance date for certain categories of computing equipment. *Summary:* The Commission considers the petitions filed by the following parties requesting partial relief from the January 1, 1981 compliance date: Health Industry Manufacturers Association requests waiver of the interim label requirements for medical devices; Sega Enterprises Inc., Atari, Inc., Stern Electronics Inc., each requests stay of compliance for coin operated electronic games; Tandy Corp. requests waiver of the rules for a noncomplying interface device; Heath Co. and Apple Computer Co., Inc. requests temporary stay of the rules for their respective computers.

General—3—*Title:* Petition filed by Clairol Incorporated for a waiver of Section 2.805 of the rules to permit the marketing of an ultrasonic denture cleaner. *Summary:* The Commission considers a petition from Clairol for waiver of the Commission's marketing rules. The waiver would permit Clairol to market an ultrasonic denture cleaner which does not comply with the technical requirements of Part 18 of the rules.

Private Radio—1—Amendment of Parts 2 and 94 of the rules to provide regulations for use of radio in public utility distribution automation systems (SS Docket No. 79-18).

Common Carrier—1—*Title:* Authorization of New Domestic Satellites. *Summary:* The Commission considers applications for authority to construct and launch, and the assignment of orbital locations to, new space stations in the domestic Fixed-Satellite Service proposed by Hughes Communications, Inc., Southern Pacific Communications Company, RCA American Communications, Inc., Western Union Telegraph Company (including the related applications of Space Communications, Inc. and American Satellite Company), COMSAT General Corporation, American Telephone and Telegraph Company, Satellite Business Systems and GTE Satellite Corporation.

Common Carrier—2—*Title:* American Telephone and Telegraph Company and Associated Bell System Companies, Offer of Facilities for Use by Other Common Carriers (Docket 21499). *Summary:* The

Commission will consider issuing a Notice of Proposed Rulemaking in the above-captioned docket.

Cable Television—1—"Motion for Declaratory Order" (CSR–1364) filed January 26, 1979, by Henson Aviation, Inc. "Petition for Special Relief" (CSR–1811) filed August 14, 1980, by Potomac Valley Cable Television Co., Inc., Henson Aviation, Inc., licensee of Station WHAG–TV (NBC, Channel 25), Hagerstown, Maryland, requests that the Commission issue a declaratory order clarifying paragraph 25 of the *Memorandum Opinion and Order in Docket No. 19995*, FCC 78–597, 68 FCC 2d 1461 (1978). Potomac Valley Cable Television Co., Inc., operator of a cable television system within WHAG–TV's 55-mile zone, requests that the Commission rescind the relief granted in *WHAG–TV, Inc.* (Hagerstown, Maryland), FCC 75–1117, 56 FCC 2d 127 (1975). WHAG–TV's motion is opposed by area cable systems; Potomac Valley's petition is opposed by WHAG–TV.

Cable Television—2—"Petition for Special Relief by Declaratory Ruling and Request for Expedited Action" (CSR–1763) filed May 13, 1980, by Northern New England Television. Northern New England Television is the licensee of Station WNNE–TV (NBC, Channel 31), Hanover, New Hampshire. WNNE–TV requests that the Commission waive Section 76.92(g) of the Commission's Rules as it affects the network programming of significantly viewed NBC affiliates carried on ten Vermont and New Hampshire cable television systems. WNNE–TV's petition is opposed by Continental Cablevision of New Hampshire, Inc., by Telesystems Corporation d/b/a Montpelier Cable TV and Rutland Cable TV, and by Vermont Television Corporation, operators of four of the ten cable systems, and by Maine Radio and Television Company, licensee of Station WCSH–TV (NBC, Channel 6), Portland, Maine.

Cable Television—3—"Petition for Special Relief" (CSR–1268) filed April 24, 1978, by Allen Communications, Inc. Allen Communications, Inc. is the licensee of Station WECA–TV (ABC, Channel 27), Tallahassee, Florida. Allen requests that the Commission waive Section 76.92(g) of the Commission's Rules as it affects the network programming of Station WJHG–TV (ABC, Channel 7), Panama City, Florida, carried on the cable television systems serving Quincy and Tallahassee, Florida, operated by Teleprompter of Quincy and by Clearview Cable TV, respectively. Allen's petition is opposed by Teleprompter of Quincy and by WJHG–TV, Inc., licensee of Station WJHG–TV.

Cable Television—4—Statement by KWTX Broadcasting Company, Inc., licensee of Television Broadcast Station KWTX–TV (ABC/CBS, Channel 10), Waco, Texas, filed in opposition to the Commission's decision in *Cablevision Investors, Inc.*, FCC 80–408, released August 6, 1980. The Commission must determine whether KWTX–TV has sufficiently shown that grant of the waiver requested in the captioned case would substantially impair the local broadcasters' ability to serve the public interest notwithstanding a *prima facie* showing to the contrary in the captioned case.

Aural—1—*Title:* Application for Review filed September 30, 1980 by Salem Media Corporation. *Summary:* This pleading is directed against the staff action of September 9, 1980 which sustained an objection to a request for change in the call sign of AM station WEVD, New York, New York, to WMNY.

Aural—2—*Title:* Applications by the Far East Broadcasting Company, Inc. to license AM Station KSAI, Susupe, Saipan and H. Scott Killgore d/b/a Micronesian Broadcasting Corporation to license Stations WSZE(AM), WSZE–FM, and WSZE–TV, Navy Hill (Rapagan), Saipan. *Summary:* The Commission will consider applications to license broadcast facilities in the Northern Mariana Islands Commonwealth.

Broadcast—1—*Title:* Clear Channel Broadcasting in the AM Broadcast Band. *Summary:* The Commission will consider petitions for reconsideration of the Report and Order in Docket No. 20642, Clear Channel Broadcasting in the AM Broadcast Band.

Broadcast—2—*Title:* Notice of Inquiry in the matter of amendment of the Rules concerning automation of the use of measurement data for AM broadcast stations. *Summary:* The Commission considers whether to issue a Notice of Inquiry looking towards the automation of the use of measurement data for AM broadcast stations.

Complaints and Compliance—1—*Title:* Petition by Washington Magazine, Inc. for order prohibiting on-air promotion of public broadcasting magazine *The Dial* on Stations WNET–TV, KCET–TV, WTTW–TV, WETA–TV and WETA–FM. *Summary:* Publisher of *The Washingtonian* has requested the Commission to prohibit four noncommercial educational stations, WNET–TV, KCET–TV, WTTW–TV, and WETA–TV (and WETA–FM), from making on-air announcements for *The Dial*. *The Dial* is a magazine published by a nonprofit corporation run by the participating stations for distribution to contributing members. Petitioner argues that on-air announcements for *The Dial* will violate Section 73.621 of the Commission's Rules prohibiting promotion of products and services over the air of noncommercial educational stations and will constitute an anticompetitive practice. The Commission must decide whether to grant or deny the petition.

Complaints and Compliance—2—*Title:* Williams County Broadcasting System, Inc., license renewal applications for Stations WBNO AM–FM, Bryan, Ohio. *Summary:* The Commission considers Stations WBNO AM–FM's license renewal applications and the results of a field investigation into the operation of these stations which disclosed consistent failures, over a considerable period of time, to comply with the station's past commercial proposals, yet the pending renewal applications recite essentially identical proposals for the next license term.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: December 2, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S–2220–80 Filed 12–3–80; 10:12 am]

BILLING CODE 6712–01–M

4

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 79970, December 2, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., December 4, 1980.

CHANGE IN THE MEETING: Withdrawal of the following item from the open session:

8. Agreement No. 10380: Medafrica-Nigeria America Shipping Line Limited Joint Service.

[S–2217–80 Filed 12–3–80; 9:30 am]

BILLING CODE 6730–01–M

5

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 79970, December 2, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., December 4, 1980.

CHANGE IN THE MEETING: Withdrawal of the following items from the open session:

11. Interest in Reparation Proceedings.

12. Awards of interest in overcharge cases involving mismeasurement.

[S–2224–80 Filed 12–3–80; 3:52 pm]

BILLING CODE 6730–01–M

6

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, December 10, 1980.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary Agenda:* Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board

requests that the item be moved to the discussion agenda.

1. Proposed changes to the Board's rules regarding delegation of authority for certain bank supervisory functions.

Discussion Agenda:

2. Fee Schedules and Pricing Principles to implement the Monetary Control Act. (Proposed earlier for public comment; Docket No. R–0324)

3. Proposed Federal Reserve Board budget for 1981.

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: December 2, 1980.

Theodore E. Allison,

Secretary of the Board.

[S–2221–80 Filed 12–3–80; 10:24 am]

BILLING CODE 6210–01–M

7

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 8, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Wednesday, December 10, 1980, at 10:00 a.m. An open meeting will be held on Thursday, December 11, 1980, at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 522b(c)(4)(8), (9)(A) and (10) and 17 CFR 200.402(a)(8), (9)(i) and (10).

Commissioners Loomis, Evans, and Friedman, determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, December 10, 1980, at 10:00 a.m., will be:

Formal orders of investigation.
Access to investigative files by Federal, State, or Self-Regulatory authorities.
Freedom of Information Act appeals.
Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.
Institution of injunctive action.
Litigation matter.
Regulatory matter bearing enforcement implications.

The subject matter of the open meeting scheduled for Thursday, December 11, 1980, at 10 a.m., will be:

1. Consideration of whether to grant the application of Glenn R. McQuiston to become associated with M. Waddell and Towne, Inc., a registered broker-dealer, in a supervised, non-supervisory retail sales capacity. For further information, please contact Adel Geffen at (202) 272–2947.

2. Consideration of whether to affirm action, taken by the Duty Officer, authorizing the Division of Corporation Finance to transmit to the Small Business Administration the Commission's report under Section 308(g)(2)(H)–(J) of the Small Business Investment Act, as amended. For further information, please contact Michael J. Eizelman at (202) 272–2644.

3. Consideration of whether to issue a release announcing the adoption of an amendment to the special instructions to Form U–4 which will increase the filing fees for SECO broker-dealers. For further information, please contact William J. Finegan at (202) 523–5545.

4. Consideration of whether to adopt the proposed revisions of Form U–4, the Uniform Application for Securities and Commodities Industry Registration. For further information, please contact Elizabeth S. York at (202) 272–2376.

5. Consideration of a proposed rule change of the National Association of Securities Dealers, ("NASD") (the "Papilsky" filing) that governs the giving and receiving of selling concessions, discounts or other allowances in connection with fixed price offerings of securities. For further information, please contact Kathleen McGann at (202) 272–2855.

At times changes in Commission Priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Mendelsohn at (202) 272–2091.

December 2, 1980.

[S–2223–80 Filed 12–3–80; 3:06 pm]

BILLING CODE 8010–01–M

8

TENNESSEE VALLEY AUTHORITY.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR December , 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:15 a.m., Monday, December 8, 1980.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following item is added to the previously announced agenda:

B. *Purchase Awards*

2. Reg. No. 178178—Boiler Modifications for Johnsonville Steam Plant. Consideration of award for labor, tools, materials, and miscellaneous equipment for boiler modifications for Johnsonville Steam Plant Units 7–10.

CONTACT PERSON FOR MORE INFORMATION: Craven Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting to be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Dated: December 3, 1980.

Approved:

S. David Freeman,

Richard M. Freeman,

Robert N. Clement.

[S–2222–80 Filed 12–3–80; 11:15 am]

BILLING CODE 8120–01–M

federal register

Friday
December 5, 1980

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

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 Government Contract 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.

New General Wage Determination Decisions

None.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arizona:	
AZ80–5123	Aug. 1, 1980.
AZ80–5124	Aug. 1, 1980.
Colorado:CO80–5140	Oct. 24, 1980.
Florida:	
FL80–1075	June 20, 1980.
FL80–1088	Aug. 1, 1980.
Kansas:KS79–4066	June 15, 1979.
Louisiana:	
LA80–4084	Nov. 7, 1980.
LA80–4089	Nov. 7, 1980.
Texas:	
TX80–4034	June 6, 1980.
TX80–4036	June 20, 1980.
TX80–4076	Oct. 10, 1980.
TX80–4077	Oct. 10, 1980.
TX80–4078	Oct. 10, 1980.
TX80–4085	Nov. 7, 1980.
TX80–4086	Nov. 7, 1980.
Washington:WA80–5136	Oct. 17, 1980.
Wisconsin:	
WI80–2014	Apr. 4, 1980.
WI80–2013	Apr. 4, 1980.
Wyoming:WY80–5129	Sept. 19, 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.

Pennsylvania:PA79–3001 (PA80–3075)	Feb. 2, 1979.
Texas:	
TX80–4031 (TX80–4099)	June 6 , 1980.
TX80–4033 (TX80–4098)	May 16 , 1980.
TX80–4037 (TX80–4097)	May 16 , 1980.

Cancellation Of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 28th day of November 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

Modification Page 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #AZ80-5123 - MOD. #2					
(45 FR 51393 - August 1, 1980)					
Maricopa County, Arizona					
CHANGE:					
Elevator Constructors:					
Elevator Constructors	$14.88	1.045	.82		.035
Elevator Constructors(Helpers)	10.42	1.045	.82		.035
Mason Tenders	10.44	1.02	1.20		.06
Sheet Metal Workers:					
Zone 1	14.68	1.05	1.68		.13
Zone 2	15.93	1.05	1.68		.13
Zone 3	18.68	1.05	1.68		.13
Ironworkers	14.35	1.54	2.57		.11
DECISION #AZ80-5124 - MOD. #2					
(45 FR 51388 - August 1, 1980)					
Pima County, Arizona					
Elevator Constructors:					
Elevator Constructors	14.88	1.045	.82		.035
Elevator Constructors(Helpers)	10.42	1.045	.82		.035
Mason Tenders	10.44	1.02	1.20		.06
Ironworkers	14.35	1.54	2.57		.11
Sheet Metal Workers:					
Zone A	13.44	1.20	1.92		.07
Zone B	14.66	1.20	1.92		.07
Zone C	17.32	1.20	1.92		.07

Modification Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. CO80-5140 - Mod.#2.					
(45 FR 70691 October 24, 1980)					
Las Animas, Otero and					
Pueblo County, Colorado					
CHANGE:					
ELECTRICIANS::					
Zone 1: 0-12 miles from					
Post Office:					
Electricians	$ 14.24	.75	3%+1.00		1½%
Cable Splicers	15.66	.75	3%+1.00		1½%
Zone 2: 12-20 miles from					
Post Office:					
Electricians	15.07	.75	3%+1.00		1½%
Cable Splicers	16.49	.75	3%+1.00		1½%
Zone 3: 20-32 miles from					
Post Office:					
Electricians	15.62	.75	3%+1.00		1½%
Cable Splicers	17.04	.75	3%+1.00		1½%
Zone 4: 32-50 miles from					
Post Office:					
Electricians	16.31	.75	3%+1.00		1½%
Cable Splicers	17.73	.75	3%+1.00		1½%
Zone 5: Over 50 miles from					
Post Office:					
Electricians	17.24	.75	3%+1.00		1½%
Cable splicers	18.66	.75	3%+1.00		1½%
Electrical contracts under					
$20,000 in Zones 4 and 5	11.00	.75	3%+1.00		1½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. FL80-1075					
MOD. #4					
(45 FR 41831 - June 20,1980)					
Duval County, Florida					
Change:					
Carpenters & Piledrivermen	$10.32	.72	.70		.06
Electricians:					
Wiremen	12.15	.60	3%+.81	.81	.10
Cable Splicer	12.50	.60	3%+.81	.81	.10
DECISION NO. FL80-1088					
MOD. #2					
(45 FR 51400 - August 1, 1980)					
Orange County, Florida					
Change:					
Asbestos Workers	13.25	.65	.65		.06
Ironworkers	11.28	.80	.90	.65	.05
Millwrights	12.17	.70	.70		.10
DECISION #KS79-4066 - Mod. #1					
(44 FR 34746 - June 15,1979)					
Leavenworth County, Kansas					
Add:					
Soft floor layers	$10.53	.60	.85	1.00	.105

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. LA80-4084 -					
MOD. #1					
(45 FR 74347 - November 7, 1980)					
Statewide Louisiana					
CHANGE:					
Carpenters:					
Zone 8:					
Carpenters & soft floor layers	$11.00	.65	.50		.04
Millwrights	11.75	.65	.50		.04
Piledrivermen	11.25	.65	.50		.04
Electricians:					
Zone 2 - Electricians	13.30	.45	3%		.02
Cable splicers	13.80	.45	3%		.02
Elevator constructors:					
Zone 1 - Mechanics	12.14	1.195	.95	a+b	.035
Helpers	70%JR	1.195	.95	a+b	.035
Glaziers - Zone 3	11.55	.32	.30		.01
Painters:					
Zone 8 - Painters	9.90		.50		.08
Industrial	11.92		.50		.08
DECISION NO. LA80-4089 -					
MOD. #1					
(45 FR 74361 - November 7, 1980)					
Bossier, Caddo & Calcasieu Parishes, Louisiana					
CHANGE:					
Carpenters:					
Bossier & Caddo Parishes:					
Carpenters	11.00	.65	.50		.04
Millwrights	11.75	.65	.50		.04
Piledrivermen	11.25	.65	.50		.04
Elevator constructors:					
Calcasieu Parish:					
Mechanics	12.14	1.195	.95	a+b	.035
Helpers	70%JR	1.195	.95	a+b	.035
Soft floor layers:					
Caddo & Bossier Parishes	11.00	.65	.50		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4034 - MOD. #6 (45 FR 38255 - June 6,1980) Brazos County, Texas					
CHANGE:					
Electricians	$12.825	1.00	12%		.08
DECISION NO. TX80-4036 - MOD. #5 (45 FR 41836 - June 20, 1980) Ector & Midland Cos., Texas					
CHANGE:					
Ironworkers:					
Structural, ornamental & reinforcing	11.00	.55	1.70		.10
All ironworkers on jobs 30 miles or more from Terminal (midway Odessa-Midland)	11.125	.55	1.70		.10
DECISION NO. TX80-4076 - MOD. #2 (45 FR 67535 - October 10, 1980) Wichita County, Texas					
CHANGE:					
Ironworkers:					
Structural; Ornamental; Reinforcing	11.00	.55	1.70		.10
Ironworkers on jobs 30 miles or more from the City of Wichita Falls	11.125	.55	1.70		.10
DECISION NO. TX80-4077 - MOD. #2 (45 FR 67538 - October 10, 1980) Galveston & Harris Cos., Texas					
CHANGE:					
Electricians - Harris Co.	14.25	1.00	12%		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4078 - MOD. #3 (45 FR 67537 - October 10, 1980) Travis County, Texas					
CHANGE:					
Electricians & cable splicers	$12.80	.60	8%		.8%
Line construction:					
Lineman	13.45	.60	3%		1/2%
Groundman	7.40	.60	3%		1/2%
DECISION NO. TX80-4085 - MOD. #1 (45 FR 74365 - November 7, 1980) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
CHANGE:					
Electricians:					
Zone 1 - Electricians	12.73	.60	3%+.50		1/2%
Cable splicers	14.00	.60	3%+.50		1/2%
Ironworkers - Zone 2	11.125	.55	1.70		.10
Line construction:					
Zone 2:					
Lineman	12.73	.60	3%+.50		1/2%
Cable splicers	14.00	.60	3%+.50		1/2%
Groundman	8.41	.60	3%+.50		1/2%
Operator-hole digger, line truck	9.79	.60	3%+.50		1/2%
Flat bed truck driver	7.38	.60	3%+.50		1/2%

DECISION NO. TX80-4086 - MOD. #1 (45 FR 74368 - November 7, 1980) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Electricians:					
Zone 1 - Electricians	$13.00	.60	7%		1%
Cable splicers	13.25	.60	7%		1%
Zone 2 - Electricians	13.20	.60	7%		1%
Cable splicers	14.52	.60	7%		1%
Ironworkers - Zone 2	11.125	.55	1.70		.10
Line construction:					
Linemen	14.35		3%		1/2%
Cable splicers	15.79		3%		1/2%
Groundmen	10.05		3%		1/2%
Marble, tile & terrazzo workers:					
Collin, Dallas, Denton, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.	11.86		.30		

DECISION NO. WA80-5136 - Mod #3 (45 FR 69151-October 17, 1980) Statewide Washington	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS;MARBLE SETTERS:					
Area 1	$14.82	.80	2.00		.05
Area 2	15.08	.80	.40		.07
CEMENT MASONS					
Area 2:					
Cement masons	14.73	.95	1.50		.10
Composition, Color, Mastic, Trowel Machine, Grinder, Power Tools, Gunnite Nozzleman	14.98	.95	1.50		.10
Area 3:					
Cement Masons	14.63	.85	1.25		.10
Composition, Color, Mastic, Trowel Machine, Grinder, Power Tools, Gunnite Nozzleman	14.88	.85	1.25		.10
ELECTRICIANS					
Area 4:					
Electricians	18.62	.98	3% + 1.80		.10
Cable Splicers	20.48	.98	3% + 1.80		.10
Area 6:					
Electricians	17.50	.90	3% + 2.00	5%	.02
Cable Splicers	19.25	.90	3% + 2.00	5%	.02
Area 7:					
Electricians	16.42	.84	3% + 1.05	8%	.07
Cable Splicers	18.06	.84	3% + 1.05	8%	.07
Area 8:					
Electricians	18.55	.90	3% + .45		.04
Cable Splicers	20.41	.90	3% + .45		.04
GLAZIERS:					
Area 2	13.05	.53	.55	.80	
Area 3	10.91	.69	1.10	.72	
Area 6	11.98	.48	.80		
PLUMBERS:					
Area 1	16.71	.99	1.75	2.00	.12
ROOFERS:					
Area 4:					
Roofers & Waterproofers	14.63	.85	1.10		.10
Slate & Tile Roofers	14.88	.85	1.10		.10
SHEET METAL WORKERS:					
Area 1	16.74	3% + .73	1.50		.20
SOFT FLOOR LAYERS:					
Area 1	12.05	.53	.60		
TERRAZZO WORKERS;TILE SETTERS:					
Area 2	14.41	.80	.40		

DECISION NO. WI80-2014 - MOD. #1 (45 FR 23285 - April 4, 1980) Chippewa, Eau Claire and Pepin Cos., Wisconsin	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	$14.68	.60	1.00		.15
Boilermakers	13.87	1.375	1.10		.05
Bricklayers	11.40	.85	.60		.10
Carpenters	11.72	.60	.80		.05
Residential	7.67	.60	.50		.05
Cement Masons	11.40	.85	.60		.10
Electricians	13.55	5%	3%		½of1%
Ironworkers: Structural Ornamental & Reinforcing	12.95	.85	.90		.02
Laborers: General & Mason Tenders	9.58	.55	.50		.02
Plasterer Laborer, Mortar Mixer and Air Hammer & Spade Operator	9.73	.55	.50		.02
Jack Hammer Operator	9.83	.55	.50		.02
Millwrights and Pile drivermen	12.12	.60	.80		.05
Painters: Brush	10.90		.15	5%	
Swing Stage & Structural Steel	11.15		.15	5%	
Spray & Sandblasting	11.40		.15	5%	
Plumbers	12.47	.75	.75	1.50	
Roofers	12.32			3%	
Sheet Metal Workers	12.99	.75	.60		.06

DECISION NO. WI80-2013 - MOD. #4 (45 FR 32382 - April 4, 1980) Milwaukee, Ozaukee, Washington, Waukesha Counties, Wisconsin	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Glaziers	$13.21	.95	.70		
Painters:					
Brush	11.85	1.05	1.15	.65	.05
Swing Stage	12.00	1.05	1.15	.65	.05
Structural Steel	12.20	1.05	1.15	.65	.05
Spray and Sandblasting	12.45	1.06	1.15	.65	.05

DECISION NO. WY80-5129 - Mod.#3 (45 FR 62689 - September19, 1980) Converse, Goshen, Laramie, Natrona, Niobrara and Platte Counties, Wyoming	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE :					
BRICKLAYERS; STONEMASONS::					
Area 1	$ 12.63	.60	.40		.07

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTY: Northampton
DECISION NO.: PA80-3075 DATE: Date of Publication
Supersedes Decision No. PA79-3001, dated February 2, 1979, in 44 FR 6868.
DESCRIPTION OF WORK: Building Construction, (does not include single family homes or garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	12.26	1.12	.90		.01
BOILERMAKERS	15.57	1.275	1.00		.02
BRICKLAYERS & STONEMASONS	12.10	.60	.75		.01
CARPENTERS	11.60	.87	.84		.05
CEMENT MASONS	12.00	.60	.75		.01
ELECTRICIANS:					
Allen, Hanover, Lehigh, Bath, Freemansburg, Hellertown and Bethlehem	12.45	.70	3%+.80		.02
Remainder of County	13.50	7%	3%+1.00		.02
GLAZIERS	9.19	.40	.40		.01
IRONWORKERS	13.45	1.34	1.36		
LABORERS:					
Laborers & Window Cleaners	8.69	.62	.59		
Operator of jackhammer, paving breaking and other pneumatic and mechanical tools coming under the jurisdiction of laborers, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe and the making of joints for the same and cofferdams (below 10')	8.94	.62	.59		
Wagon drills and men handling burning torches in the wrecking of buildings	9.44	.62	.59		
Plaster and mason tenders, scaffold builders and handling of all materials to be used by plasterers and masons, brick and block loaded on pallets, cement finisher tenders, gunniting and molded-D and sandblaster helpers, power buggies, all floor hardner and "cure" application					

DECISION NO. PA80-3075

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS CONT'D					
shall be the work of the mason tender. All pump such as the concrete, plasterer, mortar and water, installing plastic or other non-solid refactory materials in connection with the boiler work	9.19	.62	.59		
Barko Tamper Operator	9.71	.62	.59		
LATHERS	11.61	.65	.35		.01
LEAD BURNERS	10.75	.40	.25	b	.01
LINE CONSTRUCTION:					
Linemen	14.20	.60	3%		3/8 of1%
Cable Splicer	14.20	.60	3%		3/8 of1%
Groundmen	8.47	.60	3%		3/8 of1%
Winch truck operator	9.90	.60	3%		3/8 of1%
MILLWRIGHTS	12.15	.84	.72		.05
PAINTERS (Bethlehem):					
Brush	11.45	1.28	.80		.05
Structural Steel	12.65	1.28	.80		.05
Spray	12.45	1.28	.80		.05
PAINTERS, REMAINDER OF CO.:					
Brush	9.30	1.00	.60		
Structural Steel	10.05	1.00	.60		
Spray	11.01	1.00	.60		
PILEDRIVERMEN	11.97	2.63	1.40	a	.13
PLASTERERS	11.89	.60	.75		.01
PLUMBERS	13.83	.85	1.40		.14
ROOFERS, COMPOSITION, SLATE & TILE	12.28		1.55		
ROOFERS, HELPERS	7.21		1.55		
SHEET METAL WORKERS	11.66	1.44	1.18		.14
SOFT FLOOR LAYERS	10.25	.64	.72	.65	
SPRINKLER FITTERS	14.53	.85	1.20		.08
STEAMFITTERS	13.56	.80	1.45		.11
TERRAZZO WORKERS	11.00	.60	.75		.01

DECISION NO. PA80-3075	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Class I					
Helper, Stake Body Truck (single axle), Dumpster	10.32				
Class II					
Dump Trucks, Tandem & Batch Trucks, Semi-Trailers, Agitator Mixer Trucks, Ready Mix and Dumpcrete Type Vehicles Asphalt Distributors, Farm Tractor when used for transportation, Stake Body Truck (Tandem)	10.39				
Class III					
Euclid Type, Off-Highway Equipment - Back or Belly Dump Trucks and Double Hitched Equipment Straddle (Ross) Carrier, Low-Bed Trailers	10.88				

Welder - receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS (Where Applicable)

A-New Year;s Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:

a. Paid Holidays: Washington's Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veterans Day; Thanksgiving Day and Christmas Day.

b. 9 paid holidays, A through F and Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 full days for the employer during the 120 days prior to the holiday, and is available for work the days preceeding and following the holiday.

DECISION NO. PA80-3075	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$13.40	7.9%	10.3%	a	1.8%
GROUP 2	13.11	7.9%	10.3%	a	1.8%
GROUP 3	12.24	7.9%	10.3%	a	1.8%
GROUP 4	11.47	7.9%	10.3%	a	1.8%
GROUP 5	11.00	7.9%	10.3%	a	1.8%
GROUP 6	10.09	7.9%	10.3%	a	1.8%
GROUP 7	13.65	7.9%	10.3%	a	1.8%
GROUP 7-A	13.90	7.9%	10.3%	a	1.8%
GROUP 7-B	14.14	7.9%	10.3%	a	1.8%

CLASSIFICATIONS DEFINITIONS

GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helocopters, machines similar to the above

GROUP 2 : All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist wirh two towers, pavers 21E and over, all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, pippin type bachoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above

GROUP 3: Conveyors, building hoists (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt paint engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-½ cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above

GROUP 4: Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishingmachines concrete breaking machines, rollers, seaman pulverzing mixer, power broom, seeding spreader, tireman (for power equipment) machines similar to above

GROUP 5: - Fireman, grease truck

GROUP 6: Oilers and deck hands (personnel boats), core drill helper

GROUP 7: All machines with booms (including jib, masts, leads, etc): 100 ft. and over

GROUP 7-A: 150 ft. and over
GROUP 7-B: 200 ft. and over

FOOTNOTES:

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

SUPERSEDEAS DECISION

STATE: TEXAS

COUNTIES: Bell, Bosque, Coryell, Falls, Hill & McLennan

DECISION NO.: TX80-4099

DATE: Date of Publication

Supersedes Decision No. TX80-4031 dated June 6, 1980 in 45 FR 38250.

DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories).

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
ZONE 1 - Bell, Coryell & Falls	$13.70	.70	.90		.08
ZONE 2 - Bosque, Hill & McLennan	12.99	.70	1.00		.03
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS	11.50	.70	.55		.03
CARPENTERS:					
ZONE 1 - Bell & Coryell Cos.					
Carpenters	10.10				
Millwrights	10.35				
ZONE 2 - Bosque, Falls, Hill & McLennan:					
Carpenters	10.91	.42			
Millwrights	12.18	.42			
CEMENT MASONS	11.29	.60	.55		
ELECTRICIANS:					
ZONE 1 - Bell (that part which is nearer to Waco than Austin but excluding that part of Ft. Hood, the boundary which presently is located approx. 2 miles inside the Bell Co. line & the City of Killeen), Bosque, Coryell (except that part of Ft. Hood south of Cowhouse Creek), Falls, Hill & McLennan Cos.					
Electricians	11.50	.60	3%		½%
Cable splicers	12.50	.60	3%		½%
ZONE 2 - Bell (that part which is nearer to Austin than Waco & not to exceed more than 2 miles into Bell Co. from the southeast boundary line of Coryell Co., Gray Field & the City of Killeen)					

DECISION NO. TX80-4099

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS ZONE 2 CONT'D: & Coryell (that part south of Cowhouse Creek) Counties					
Electricians & cable splicers	$ 12.80	.60	8%		.8%
ELEVATOR CONSTRUCTORS:					
Mechanics	11.14	1.195	.82	a+b	.035
Helpers	70%JR	1.195	.82	a+b	.035
GLAZIERS	7.50				
IRONWORKERS	11.65	.55	1.45		.12
LABORERS:					
Unskilled	3.10				
Mason tenders & mortar mixers	3.55				
LATHERS	11.10			1.00	.05
LINE CONSTRUCTION:					
ZONE 1 - Bell (that portion which is nearer to Waco than Austin but excluding that part of Ft. Hood, the boundary which presently is located approx. 2 miles inside the Bell Co. line & the City of Killeen); Bosque, Coryell (that portion except part of Ft. Hood south of Cowhouse Creek), Falls, Hill & McLennan Counties:					
Linemen	12.15		3%		1/2%
Cable splicers	13.37		3%		1/2%
Groundman	8.51		3%		1/2%
ZONE 2 - Bell (that portion which is nearer to Austin than Waco) & Coryell (that portion south of Cowhouse Creek) Cos.:					
Linemen	14.07		3%		1/2%
Cable splicers	15.48		3%		1/2%
Groundmen	9.85		3%		1/2%

DECISION NO. TX80- 4099

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
GROUP 1 - Brush	$ 9.40				.04
GROUP 2 - Boiler Pipe & steel, structural steel, window jacks, roofs, stage work, smoke stack, water towers, boatswain chair	9.90				.04
GROUP 3 - Ames tools for dry wall	10.00				.04
GROUP 4 - Spray work & self-feeding rollers	10.15				.04
GROUP 5 - Steam cleaning, sandblasting & hazardous work	10.50				.04
PLASTERERS	12.24	.60	.55		.01
PLUMBERS & PIPEFITTERS:					
ZONE 1 - Area within a 35 mile radius of Waco including Temple, Marlin, Clifton, Hillsboro & Belton	10.88	.30	.55		.04
ZONE 2 - All other areas	11.28	.30	.55		.04
ROOFERS:					
GROUP 1 - Slate, tile, asbestos, roofing & siding	6.95				.03
GROUP 2 - Composition, built-up damp & waterproofing	6.80				.03
GROUP 3 - Kettlemen	5.10				.03
SHEET METAL WORKERS:					
ZONE 1 - Within a radius of 20 miles from the McLennan Co. Court House	10.40	3%+.45	.60		.09
ZONE 2 - Over 20 miles up to & including 45 miles	10.90	3%+.45	.60		.09
ZONE 3 - Over 45 miles	11.40	3%+.45	.60		.09
SPRINKLER FITTERS	13.71	.85	1.20		.08
TRUCK DRIVERS	3.10				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS:
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%
over 5 yrs. - 8% of basic hourly rate
b - Paid Holidays A thru G

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$12.99		.55		.05
Group 2	11.22		.55		.05
Group 3	10.00		.55		.05
Group 4	9.89		.55		.05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS
GROUP 1 - Heavy duty mechanic; Blade grader - self-propelled; Crawler dozers or loaders; Derricks, power operated (all types); Draglines; Cableway; Backhoe; Crane, power operated (all types); Elevating grader, self-propelled; Hoist, motor driven, two drums or more; Mix mobile; High-lifts and loaders, over 1/3 cu. yd. capacity; Winch truck; Locomotive; Mixer, 14 cu. ft. or over; Paving mixer (all sizes); Scraper; Trenching machine (all sizes); Gradall; Foundation boring machine; Scoopmobile; Shovel, power operated; Pump crete machine; Rock crusher operated on job; Well points including installations; Riding compactor; Forklift over 1500 lb. capacity; Flat wheel rollers (60" & over); Pneumatic rollers (10 tons & above)
GROUP 2 - Blade grader, towed; Flex plane; Form grader; Mixer, less than 14 cu. ft.; Pulsometer; Conventional truck crane driver and oiler; Combination man; Hoist, single drum; Pneumatic roller; High-lifts and loaders, 1/3 cu. yd. or less; Foklift, 1500 lb. capacity or less
GROUP 3 - Fireman
GROUP 4 - Oiler

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

INCIDENTAL PAVING & UTILITIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Tool Man	$ 3.55				
Asphalt Heaterman	4.25				
Asphalt Raker	5.00				
Asphalt Shoveler	4.25				
Batching Plant Scaleman	5.50				
Carpenter	5.60				
Carpenter Helper	4.10				
Concrete Finisher (Paving)	5.50				
Concrete Finisher Helper (Paving)	4.75				
Concrete Finisher (Structures)	6.00				
Concrete Finisher Helper (Structures)	4.00				
Concrete Rubber	4.00				
Electrician	8.90				
Electrician Helper	4.00				
Form Builder (Structures)	4.50				
Form Builder Helper (Structures)	4.00				
Form Setter (Paving & Curb)	4.65				
Form Setter Helper (Paving & Curb)	3.75				
Form Setter (Structures)	5.75				
Form Setter Helper (Structures)	4.00				
Laborer, Common	3.25				
Laborer, Utility Man	3.50				
Mechanic	5.25				
Mechanic Helper	4.10				
Oiler	4.50				
Serviceman	4.75				
Piledrivermen	4.00				
Pipelayer:					
Bosque, Falls, Hill & McLennan Cos.	5.50				
Pipelayer (Concrete & Clay):					
Bell & Coryell Cos.	5.50				
Pipelayer Helper:					
Bosque, Falls, Hill & McLennan Cos.	3.30				
Pipelayer Helper (Concrete & Clay):					
Bell & Coryell Cos.	3.30				

INCIDENTAL PAVING & UTILITIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers (Bell & Coryell Cos.):					
Zone 1 - 35 miles from Waco including towns of Temple & Belton	$10.88	.30	.55		.04
Zone 2 - all area not included in Zone 1	11.28	.30	.55		.04
Powderman	5.50				
Reinforcing Steel Setter (Structures)	5.25				
Reinforcing Steel Helper	3.75				
Sign Erector	4.65				
Sign Erector Helper	3.30				
Spreader Box Man	4.60				
Swamper	4.55				
Power Equipment Operators:					
Asphalt Distributor	4.65				
Asphalt Paving Machine	5.10				
Broom or Sweeper Op.	4.50				
Bulldozer, 150 HP & Less	4.75				
Bulldozer, over 150 HP	5.00				
Concrete Paving Curing Machine	5.00				
Concrete Paving Saw	4.75				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & over)	6.50				
Crusher or Screening Plant Operator	4.60				
Foundation Drill Operator (Truck Mounted)	4.50				
Foundation Drill Op. Helper	4.25				
Front End Loader (2½ CY & Less)	4.65				
Front End Loader (Over 2½ CY)	5.00				
Motor Grader Op., Fine Grade	6.55				
Motor Grader Operator	5.30				

INCIDENTAL PAVING & UTILITIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Ops. Cont'd:					
Roller, Steel Wheel (Plant-Mix Pavements)	$ 4.50				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	4.50				
Roller, Pneumatic (Self-Propelled)	3.85				
Scrapers (17 CY and Less)	4.50				
Scrapers (Over 17 CY)	5.00				
Tractor (Crawler Type) 150 HP and Less	3.30				
Tractor (Crawler Type) over 150 HP	4.60				
Tractor (Pneumatic) 80 HP & Less	3.70				
Tractor (Pneumatic) over 80 HP	4.85				
Traveling Mixer	4.10				
Trenching Machine, Light	4.00				
Trenching Machine, Heavy	4.45				
Wagon Drill, Boring Machine or Post Hole Driller Op.	4.20				
Truck Drivers:					
Single Axle, Light	4.00				
Single Axle, Heavy	4.00				
Tandem Axle or Semitrailer	4.00				
Lowboy-Float	4.80				
Welder	5.25				
Welder Helper	3.60				

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: Texas COUNTY: Bowie
DECISION No. TX80-4098 DATE: Date of Publication
Supersedes Decision No. TX80-4033, dated May 16, 1980, in 45 FR 32544
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.99	.70	1.00		.03
BOILERMAKERS	12.70	1.275	1.00		
BRICKLAYERS	8.15	.40	.35		.04
CARPENTERS:					
Carpenters	10.50				.05
Millwrights	13.10				.05
Piledrivermen	11.50				.05
CEMENT MASONS	6.82				
ELECTRICIANS	12.02	.60	3%+.50		½%
ELEVATOR CONSTRUCTORS:					
Mechanics	11.14	1.195	.82	a+b	.035
Helpers	70%JR	1.195	.82	a+b	.035
GLAZIERS	5.30				
IRONWORKERS	12.45	.45	.90		.06
LABORERS, UNSKILLED	3.70				
LINE CONSTRUCTION:					
Linemen	13.70		3%		½%
Cable Splicers	14.11		3%		½%
Hole digger op., heavy equipment ops. (or pole cat equivalent); powderman	12.46		3%		½%
Line truck driver (winch op.)	11.23		3%		½%
Jackhammer man	10.28		3%		½%
Groundman	9.18		3%		½%
Truck driver (flat bed, ton & half & under)	9.72		3%		½%
PAINTERS	5.50				
PLUMBERS & PIPEFITTERS:					
Within a 25 mile radius of Texarkana	13.85	.68	.70		.05
Outside a 25 mile radius of Texarkana	14.25	.68	.70		.05
ROOFERS	5.71				
SHEET METAL WORKERS	5.99				
SOFT FLOOR LAYERS	7.50				
SPRINKLER FITTERS	13.71	.85	1.20		.08
TRUCK DRIVERS	5.00				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES FOR ELEVATOR CONSTRUCTORS
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% basic hourly rate,
b - paid Holidays A thru G

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS
A- New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day;: F-the Friday after Thanksgiving Day; G-Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
GROUP 1	$7.765	.65	1.00		.15
GROUP 2	11.53	.65	1.00		.15
GROUP 3	11.93	.65	1.00		.15

GROUP 1 - Oiler-Fireman
GROUP 2 - Air Compressor, Pumps, Welding Machines, Throttle Valves, Light Plants; Conveyor; Wagon Drill; Elevators Building; Form Graders; Hoist, Single Drum; Ford Tractor including blade and mover on rear; Mixers, less than 14 cubic feet; Screening Plants; Crushing Plants; Fork Lifts (short, under 25 feet); Concrete Pumps (all types); Bobcat type equipment
GROUP 3 - Ford Tractor or like with any attachment (except blade and mower on rear); Drilling Machine (all types); Scoopmobile; Hoists, two drums or more; Forklifts (over 25 ft.); Winch Truck; Six Wheel Truck, when used continuously for 5 days; Mixermobile; Locomotives; Mixers, 14 cubic feet or over; Blade Graders, self-propelled; Cableways; Cranes - power operated to 100 ft.; Derricks, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving Mixers (all types); Pile Drivers; Mobile Concrete Mixers over 14 cu ft.; Bulldozers, Loaders, Tractovators; Scrapers and Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressors & Air Tugger; Boilers, two or more fired by one man

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: Texas COUNTY: Lubbock
DECISION NO: TX80-4097 DATE: Date of Publication
Supersedes Decision No. TX80-4037, dated May 16, 1980 in 45 FR 32545.
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes & apartments up to and including 4 stories). (Use current heavy and highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.95	.80	1.25		.02
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS & STONEMASONS	10.70	.57	.30		.03
CARPENTERS	10.70	.48	.60		.01
CEMENT MASONS	8.15				
ELECTRICIANS:					
Electricians	12.55	.60	3%		1/10%
Cable splicers	12.80	.60	3%		1/10%
IRONWORKERS:					
Structural; Ornamental; Reinforcing	11.00	.55	1.70		.10
All ironworkers on jobs 30 miles or more from the city of Lubbock	11.125	.55	1.70		.10
LABORERS:					
GROUP 1-Construction laborers, including excavation, pouring concrete, carpenter tenders, reinforcing, shoring, digging, loading & unloading materials, wrecking buildings & all structures & all construction laborers except those named below	6.56	.30	.27		
GROUP 2-Air tool op. (jackhammer, vibrator, tamper, brush hammer, chipping hammer, air or electric), power buggy man, pipelayer (concrete & clay & all non-metallic pipe); handling, laying & cleaning pumpcrete pipe	6.83	.30	.27		
GROUP 3-Mortar mixers, mason tenders, plasterers tenders, cement finisher tender, lather tender	6.76	.30	.27		
GROUP 4-Wagon drill	6.91	.30	.27		
GROUP 5-Blasters & Powderman	7.16	.30	.27		
LATHERS	6.75	.20			.01
LINE CONSTRUCTION:					
Linemen	12.55	.60	3%		1/10%
Operators	80%JR	.60	3%		1/10%
Groundmen	55%JR	.60	3%		1/10%
Flat bed truck driver	70%JR	.60	3%		1/10%
PAINTERS:					
Brush	9.55				
Spray; Sandblasters	10.30				
PLASTERERS	7.00				
PLUMBERS & STEAMFITTERS	12.15	.50	.55		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS	$ 3.50				
SHEET METAL WORKERS	12.38	.50	.66		.12
TRUCK DRIVERS	3.10				
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental					
POWER EQUIPMENT OPERATORS					
GROUP 1	10.025	.65	.625		.15
GROUP 2	10.925	.65	.625		.15
GROUP 3	11.325	.65	.625		.15

GROUP 1 - Oiler-Fireman

GROUP 2 - Air Compressors, Pumps, Welding Machines, Throttle Valves, Light Plants (3 to 6 machines); Conveyor; Wagon Drill; Elevators Building; Form Graders; Hoist, Single Drum; Ford Tractor including blade and mower on rear; Mixers less than 14 cubic feet; Screening Plants; Crushing Plants; Fork Lifts (short, under 25 feet); Concrete Pumps (all types); Bobcat type equipment; Ford tractor or like with any attachments (except blade and mower on rear)

GROUP 3 - Backhoe; Drilling Machines (all types); Scoopmobiles; Hoist, two drums or more; Fork Lifts (over 25 feet); Winch Truck; Six Wheel Truck, when used continuously for 5 days; Mixermobile; Locomotives; Mixer, 14 cubic feet or over; Blade Graders, self-propelled; Cableways; Cranes-power operated (to 100 ft. of boom); Derricks, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving Mixer (all types); Pile Drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers, Loaders, Tractorvators; Scrapers and Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressors, Pumps, Welding Machines and Light Plants (7 to 12 machines); Air Compressors & Air Tugger; Boilers, two or more fired by one man; Heavy Duty Mechanic

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)).

[FR Doc. 80-37596 Filed 12-4-80; 8:45 am]

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federal register

Friday
December 5, 1980

Part III

Federal Reserve System

Credit; Truth in Lending; Revision of Regulation Z

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0288]

Credit; Truth in Lending; Revision of Regulation Z

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing for public comment a second complete revision of Regulation Z (Truth in Lending), to implement amendments to the Truth in Lending Act adopted by Congress in March 1980 (Title VI of the Depository Institutions Deregulation and Monetary Control Act, Pub. L. 96-221). That act becomes effective on April 1, 1982, but requires the Board to have implementing regulations in place by April 1, 1981. The Board published a first draft for comment on May 5, 1980 (45 FR 29702) and has now revised the proposal on the basis of the comments received and its own analysis.

DATE: Comments must be received by January 19, 1981.

ADDRESS: Comments may be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, NW., Washington, D.C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments received should refer to docket number R-0288. To insure consideration, comments must be received by the Board by the close of the official comment period. To facilitate analysis, comments on separate sections of the regulation should be made on separate pages. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, Board of Governors, Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412, (202) 452-3667, or (202) 452-3867:

Secs.
226.1, 3—Beth Morgan
226.2—Denise Rechter
226.4—Gerald Hurst
226.5-11—Ruth Amberg, Jesse Filkins, Stan Mabbitt
226.12—John Wood
226.13—Barbara Ranagan
226.14—Stan Mabbit
226.15—Ruth Amberg
226.17—Denise Rechter
226.18—Beth Morgan, Claudia Yarus
226.19, 20, 23—Susan Werthan
226.21, 22, 24—Rugenia Silver
Subpart D—Barbara Ranagan, Steve Zeisel
Subpart E—Lynn Goldfaden, Susan Werthan
Appendices—Gerald Hurst, Denise Rechter

SUPPLEMENTARY INFORMATION: In March 1980, Congress adopted the Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act, Pub. L. 96-221), which contained sweeping revisions to Truth in Lending. While the act does not become effective until April 1, 1982, the Board is required to adopt final rules implementing the act by April 1, 1981, and creditors may begin complying with the new regulation at that time.

One month after adoption of the revised statute, the Board published for comment a proposed revision of Regulation Z (45 FR 29702, May 5, 1980). That revision incorporated both changes mandated by the revised statute and changes under the existing act. The proposal was published with the understanding that it did not necessarily reflect all of the revisions that the Board might consider in implementing the new statute. The Board published the proposal at that time in order to encourage public involvement in the process as early as possible and to assure that the entire rulemaking procedure could be completed by April 1, 1981.

Following a three-month comment period ending on July 31, 1980, the Board received more than 500 comments on the May proposal. (Copies of these comments are available through the Office of the Secretary, Board of Governors, Federal Reserve System, Washington, D.C.) As a whole, the comments reflected strong support for the concept of simplification, but, as expected, they raised a great variety of substantive issues regarding particular aspects of the draft. In many cases, these comments form the basis for alterations in specific provisions, as noted in the section-by-section analysis of the draft. In other cases, as also noted, the position urged by comments is not reflected in the draft, because in the Board's view that position would not properly carry out the statutory goals.

The May proposal contained substantial changes in both the organization and the substance of the existing regulation. The structure of the May proposal has been retained in this draft, but this proposal reflects some major substantive changes from both the current regulation and that earlier proposal. The Board believes that the Truth in Lending Simplification and Reform Act constitutes a mandate to the Board for extensive revision in the regulation. Moreover, the Board believes that substantial consumer benefits are to be gained from meaningful simplification of the regulation.

First of all, simplification will produce disclosures that are simpler, easier to understand, and in a form more readily usable by consumers. A primary goal of the simplifying effort is disclosures that provide essential information in a straightforward, uncluttered form. To the extent that essential information has previously been accompanied by complex disclosure of less significant terms, the impact and utility of the resulting disclosure statement have been diluted.

Second, as a general matter regulatory burdens on the credit-granting process may adversely affect consumer access to credit, and certainly have a bearing on its relative costs. To the extent that these burdens can be reduced, there should be a beneficial effect on the availability and cost of credit. The Board believes that the reductions being proposed, while having the prospect of significantly reducing regulatory burden, nevertheless leave in place the provisions necessary to carry out the original purpose of the Act.

Third, by reducing the emphasis of the regulation on technical details, the Board believes that the efforts of supervisory agencies can be directed more toward matters of substance, better serving the cause of consumer protection.

Finally, no matter how vigorous the supervisory enforcement, without a spirit of committed voluntary compliance by creditors, Truth in Lending will probably never provide the full consumer benefits for which it was designed. To the extent that creditors have perceived the regulation as dealing with hypertechnical complications unrelated to any real consumer benefit, acceptance of the goals of Truth in Lending may well have been hampered. By paring back the regulatory requirements to those that have obvious consumer benefit, support for consumer regulations as a legitimate area of government activity should be increased. This, too, should increase long-range consumer benefits.

This proposal, which is based on both the comments received on the May draft and on extensive further analysis in the six months since adoption of the new act, reflects five major principles. First, the regulation substitutes, where possible, precise, easily-applied rules for principles that create ambiguity and require additional regulatory clarification. Many of the staff

interpretations of the current regulation, as well as a portion of the existing regulation itself, represent attempts to clarify and give substantive meaning to rather subjective principles that are not amenable to precise measurement. A certain amount of subjectivity in the regulation is unavoidable; not every regulatory concept can be reduced to a quantifiable standard. However, the Board believes that the concept of simplification requires further progress in that direction.

Second, tolerances in disclosures should be more widely available and creditors should be encouraged to make use of good faith estimates. The Truth in Lending Act explicitly authorizes the Board to permit tolerances in numerical disclosures and recognizes the utility of using estimates in making disclosures. While accuracy of disclosures is obviously important for informed credit shopping, absolute inflexibility is not a prerequisite to meaningful credit information. Congress has already specifically authorized a tolerance for the annual percentage rate, which is the most important credit term in the regulation, and the proposal provides similar slight tolerances for other numerical disclosures. The proposal also encourages the greater use of good faith estimates in making disclosures, on the grounds that earlier disclosure may facilitate credit shopping. The Board recognizes that early disclosure is not always consistent with absolute precision in disclosures. Indeed, disclosures are most precise when made at the time of consummation, since the creditor at that point is most likely to have all of the necessary information for total accuracy. However, at the point of consummation, the consumer has normally made the credit decision, and Truth in Lending disclosures then merely confirm the customer's understanding of the transaction. Such disclosures do not necessarily form a valid basis for comparison shopping. For this reason, the Board seeks to encourage the greater use of good faith estimates in making disclosures, in the belief that this will in turn encourage creditors to provide disclosures at an earlier time.

Third, the regulation reflects an emphasis on disclosures that are relevant to credit decisions, as opposed to disclosures related to events occurring after the initial credit choice. In the Board's view, the primary goals of the Truth in Lending Act are not particularly enhanced by regulatory provisions relating to changes in terms on outstanding obligations and on the effects of the failure to comply with the terms of the obligation.

Fourth, burdens not justified by substantial consumer benefits should be eliminated from the regulation. As in any rulemaking activity, the Board will weigh the cost of a particular provision to creditors against its potential benefit to consumers. While this cost-benefit analysis has always been a factor in implementation of the Truth in Lending Act, the Board believes that the legislative history of the Truth in Lending amendments, as well as congressional concern regarding the burden of regulations as a whole, dictates a heightened awareness of this element that must be reflected in the new Regulation Z. In carrying out the requirements of the statute, the Board will not impose any burdens on the credit-granting process that cannot be fully justified by consumer benefits. This analysis is not always amenable to precise measurement, but involves such factors as the number of transactions subject to a particular provision, the complexity of the disclosures or underlying mathematical calculations needed to comply with it, and the extent to which it is likely to further the general statutory goals of providing certain basic information to facilitate credit shopping.

Fifth, more flexibility should be incorporated into the regulation. While the basic requirements of the regulation should be set forth as clearly and simply as possible, rigid rules may be unnecessary in other cases and may in fact hamper creditors' efforts to make disclosures that accurately reflect their own credit plans. The proposal attempts, as far as possible, to permit creditors more flexibility in calculating and disclosing the terms of individual transactions.

The proposal set forth below illustrates the application of those principles. The Board recognizes, however, that the proposal remains a rather complex and lengthy regulatory document. For three reasons, the Board believes that even the most successful simplification effort cannot distill the Truth in Lending Act into a handful of simple rules.

First, the scope of the original Truth in Lending Act has been greatly expanded by statutory additions beyond mere credit disclosures. The regulation now also implements statutes governing the issuance of credit cards, liability for their loss, resolution of billing errors, and disclosures for consumer leases. There are provisions to prevent creditors from excluding required credit life insurance from the cost of credit, to protect consumers from unwisely encumbering their homes, and to ensure that consumers can withhold payment for shoddy merchandise when using a bank credit card. As a consequence, the statute now runs to over 15,000 words. Although Congress has made extensive revisions to certain disclosure requirements, much of the underlying law was unaffected by the recently enacted Truth in Lending amendments. Thus, the breadth of the legislation that Regulation Z implements remains a major impediment to brevity and simplicity.

Second, one goal of the simplification effort is to incorporate virtually the entire body of published Truth in Lending material into the regulation and an accompanying commentary. This commentary will contain much of the detail and specificity now in the existing regulation and in the more than 50 Board interpretations and 1,500 staff interpretations issued on Regulation Z since 1969. While much of this material will be reflected in the new regulation or commentary, the Board envisions that the interpretations themselves will be rescinded. The commentary will probably not be adopted at the same time as the final regulation, but should be available by the time the regulation becomes mandatory in April 1982. The Board anticipates that the commentary will have the status of an official interpretation of the regulation, and that no staff interpretations will be issued under the revised regulation. The process of incorporating the existing interpretations is at odds with the goal of simply shortening the regulation. To some extent, this conflict will be resolved by including the necessary detail in the commentary, rather than in the regulation itself. However, the regulation must incorporate some of the material previously contained in interpretations.

Third, credit itself has become very complex. It may be available on a revolving or closed-end basis; payable on demand or in equal or graduated installments; with a precomputed finance charge, on a simple interest basis, or both; secured or unsecured; and with or without credit life and property insurance, which may be voluntary or required. It may be requested in person, by mail, or by telephone, and may be refinanced, assumed, or deferred. In most cases, implementing the statute requires that these variations, and many more, be reflected in the regulation.

All of the significant changes to the proposal are discussed fully in the section-by-section analysis of the regulation. However, some of the more

important changes are highlighted here, to illustrate the thrust of the proposal:

A tolerance would be provided for finance charge disclosures, similar to that now provided in annual percentage rate calculations.

A greater annual percentage rate tolerance would be authorized for all irregular transactions.

Seller's points would be excluded from the finance charge in all cases.

The creditor definition would contain a precise numerical rule for determining whether the definition applies.

The regulation would require no redisclosure when a term is changed prior to consummation, rendering earlier disclosures inaccurate.

Refinancing would be redefined to cover only those changes in terms which extinguish an existing obligation and create an entirely new one in its place.

Consummation, the time by which disclosures must be given, would be defined as the time at which a consumer is contractually bound to a transaction, not merely when a nonrefundable fee is paid.

Disclosures would be based only on the legally enforceable obligation between the parties, not on any unenforceable understanding which is at variance with the contract.

The concept of required deposit balances would be eliminated from the regulation.

Security interest would be defined much more narrowly, to exclude a variety of incidental rights.

No disclosure of an after-acquired property clause would be required in connection with disclosure of a security interest.

The waiver of the right of rescission would be more readily available to consumers.

The Board recognizes that these changes, as well as similar revisions discussed below, may result in less information being provided to consumers. At the same time, the changes may eliminate specific guidance now provided to creditors with unusual types of transactions or credit plans. Much of the complexity in the existing regulation results from the Board's attempts over the last 12 years to provide consumers with disclosures in every possible credit transaction and to provide creditors with precise rules for every such circumstance. Any attempt to significantly reduce the regulatory burden and to decrease the complexity in the regulation will necesarily result in reduced information and reduced guidance in certain situations. The Board believes that this reduction is unavoidable if there is to be any meaningful simplification of Regulation Z, and the proposal reflects that belief.

The section-by-section analysis compares the new proposal with the first draft published in May. Many of the provisions are unchanged, or have been the subject of nonsubstantive editorial revisions, and that fact is briefly noted in the discussion. The analysis does not reiterate the same material contained in the May draft; its purpose is to highlight significant changes and discuss comments on the first proposal that the Board believes should be addressed.

Comment is solicited until January 19, 1981. In view of the rapidly-approaching April 1 deadline for completion of the rulemaking process, commenters must submit their comments within the specified time to insure adequate consideration. Since many of the issues arising from the proposal and its predecessor have already been addressed, commenters are encouraged to focus particularly on new issues not previously discussed, as well as on the impact of changes reflected in this proposal.

Subpart A—General

Section 226.1—Authority, purpose, coverage, organization, penalties and liabilities

This section restates the authority and purpose provisions now contained in § 226.1(a) of the current regulation, and describes the conditions under which persons will be subject to the credit and leasing requirements. It also explains the reorganization of the regulation into five major subparts, and directs attention to the shifting of certain material from the regulatory text into appendices. Except for the deletion of paragraph (e), relating to circumvention or evasion, and minor editorial revisions, this section is substantially unchanged from the May proposal.

Paragraphs (b)(1) and (2) of the May proposal have been merged into a single paragraph (b). The word "dwelling" has been substituted for "residence" to conform to the terminology used in the statute and the regulation as a whole, and the clause concerning the regulation of trade practices has been deleted since it added little to the substance of the section. In response to comments, the Board emphasizes that the reference to charges in paragraph (b) includes interest rates.

In paragraph (c)(1), the parenthetical explanations have been deleted as unnecessary.

Several commenters expressed concern about whether foreign branches of domestic banks are subject to Regulation Z. There is nothing in the Truth in Leading Act to indicate that the Congress intended the act to apply beyond the territorial limits of the United States. In fact, the act's declaration of purpose reflects a strong domestic orientation; Section 102 states that the Congress sought by means of the informed use of credit to strengthen competition among creditors and to enhance economic stabilization. The domestic ecomony would be the logical target for such goals. Hence, it is the Board's view that creditors (including United States branches of foreign banks) must comply with Regulation Z when consumer credit is extended to residents of the United States. A foreign branch of a United States bank need not comply with the act or regulation, on the other hand, in extending credit to a United States citizen residing or visiting abroad.

The majority of the commenters who expressed an opinion regarding the format of the May proposal favored the use of subparts, even though it results in a longer regulation. The comments also clearly favored the publication of an official commentary to facilitiate compliance by creditors. Many of them endorsed the idea of following the Uniform Commercial Code format.

Paragraph (e) of the May proposal expressly prohibited creditors from taking any action for the purpose of circumventing or evading the disclosure requirements of Regulation Z. Many of the commenters urged the Board to delete this provision because of the likelihood that it could foster litigation, particularly since it contained no reference to knowing or intentional actions. After further consideration of this matter, the Board has decided to delete the provision in order to avoid adding ambiguity regarding the application of the regulatory requirements.

A new paragraph (e) has been added to provide a reference in the regulation to the various liability provisions in the Truth in Lending Simplification and Reform Act of 1980. A number of commenters suggested such a reference.

Section 226.2—Definitions and rules of construction.

Section 226.2 has been reorganized into two paragraphs: § 226.2(a), which contains, in alphabetical order, the definitions that apply to the entire regulation, and § 226.2(b), which contains the rules of construction. Definitions that apply solely to consumer leasing are now located in § 226.25 of this regulation. Section 226.2 incorporates all of the defined terms used in the May proposal, with the exception of "required deposit balance"

and the leasing definitions, and adds three new defined terms: "downpayment," "prepaid finance charge," and "regular price."

(a) *Definitions.*

Advertisement. This definition has been revised from that in the May proposal to clarify that only commercial messages are within its purview. This revision is consistent with the staff letters and the explanatory material that accompanied the May draft. The definition continues to exclude direct personal contact such as follow-up letters or cost estimates for individual consumers, but it does not exclude messages such as point of sale displays.

Certain types of messages, such as informational material exchanged between business entities or notices required by state law, may come within the definition, depending on the facts and circumstances of each case. For example, if the distribution of the informational materials is limited to business entities, and is not made available to consumers, or if a state law mandates that a specific notice be displayed and only the information so mandated is included in that notice, these would not constitute advertisements.

Finally, it should be noted that all persons, not only creditors, must comply with the advertising provisions. For example, a real estate developer that does not finance the sale of its houses may be subject to the advertising requirements of §§ 226.16 and 226.24, even though it may not be a creditor.

Arranger of credit. This definition has been revised to parallel the new numerical standard of more than 25 times in a calendar year (or more than five times a year when the obligation is secured by a dwelling) which is proposed in the definition of "creditor," discussed below. The definition is otherwise similar to its counterpart in the May draft.

Under this definition, a person may be considered an arranger only if the primary credit extender does not meet the definition of a "creditor." Thus, the definition should substantially limit the number of persons that would be considered arrangers of credit. The most likely example is a loan broker in a real estate transaction who arranges for owner financing for the buyer.

Billing cycle or *cycle.* In response to comment, this definition has been revised regarding the permissible variance among the number of days in each cycle. The purpose of a variance is to account for weekends, holidays, and differences in the number of days in the months. The previous proposal provided that cycles could be considered equal unless the number of days in a cycle varied by more than four days. The present proposal clarifies the computation of the four-day variance by tying that variance to the regular day or date around which the creditor plans its cycles. Comment is solicited on the feasibility of this proposed approach.

The requirement of equal cycles would apply even if a creditor applies a daily periodic rate to the daily balance, as the requirement is intended both to facilitate accurate disclosure of the annual percentage rate and to assure the furnishing of statements on a regular basis.

As noted in the previous **Federal Register** material, the use of the word "cycle" in addition to "billing cycle" is intended to make clear that the provision concerning regular periodic statements applies regardless of whether the creditor "bills" in the traditional sense or merely sends a statement of account activity, as may be the case with many depository institutions that do not bill because they receive payment directly from a payroll deduction or the consumer's asset account.

Board. This definition is unchanged from the May proposal.

Business day. This definition has been significantly revised from that in the May draft. The Board now proposes to adopt a business day definition that is substantially similar to its counterpart in Regulation E, which implements the Electronic Fund Transfer Act. This revision is in response to numerous comments that favored the adoption of similar definitions for Regulation E and Regulation Z. The Board anticipates that creditors will have the same business days for all provisions of this regulation, but it recognizes that a creditor's business days may differ for purposes of the two regulations. The Board solicits comment on whether this new approach is appropriate.

The Board recognizes that transactions that are subject to rescission may be different from other transactions and may require a different business day definition. Comment is solicited on alternative definitions which might be more appropriate for rescindable transactions.

Cardholder. This definition differs from the May proposal which, like the present regulation, provided that "cardholder" includes any person to whom a credit card is issued for any purpose. The present proposal provides that "cardholder" means a natural person to whom a credit card is issued for consumer credit purposes or a natural person who is a co-obligor or guarantor for such a card. In addition, for the limited purposes of the requirements of the sections on issuance and liability of credit cards, a "cardholder" includes *any* person, including organizations, to whom a credit card is issued for any purpose, including business, agricultural, or commercial.

The definition also stipulates that issuance of the card must have been at the request or application of the person to be covered as a "cardholder." This change reflects the issuance restrictions proposed in § 226.12(a).

Certain commenters asked that the Board specify which sections of the regulation apply to "hybrid" cards used for more than one purpose and to dual card systems. When a card is issued to an individual for consumer purposes, the mere fact that an organization has guaranteed to pay the debt does not remove it from the coverage of the consumer credit sections of the regulation. On the other hand, when a card is issued for business purposes, the fact that an individual uses it for consumer purchases does not subject the card issuer to the provisions on periodic statements, billing error resolution, and other consumer protections. Some card issuers issue two cards to the same individual, one intended for business use, the other for consumer or personal use. With such a system, the same person may be a cardholder for general purposes when using the card issued for consumer use, and a cardholder only for the limited purposes of the restrictions on issuance and liability when using the card issued for business purposes.

Card issuer. This definition remains unchanged from the previous proposal. A number of commenters asked for clarification of the agency concept, which is included in the definition and reflects the language of the statute. As agency relationships are traditionally defined by state law, the Board believes that it is inappropriate to define "agent" within the regulation, although the following examples may serve as guidance. The Board believes that merely providing services relating to the production of credit cards or data processing for others does not make one an agent of a card issuer. In contrast, a financial institution may become an agent of a card issuer when the cardholder uses a line of credit with the lender to pay obligations incurred by use of a card, pursuant to an agreement between the lender and the card issuer.

Cash price. This definition is substantially similar to its counterpart in the May draft. The phrase "taxes and fees for license, title, and registration" has been added to the end of the third

sentence to clarify that these amounts may be included in the cash price.

The Board has received numerous questions regarding the proper treatment under the regulation of seller's or manufacturer's rebates in credit sale transactions. The manner in which these rebates are handled varies widely throughout the industry and the Board does not believe that a uniform rule regarding their treatment for Truth in Lending purposes would be either desirable or possible. Therefore, the Board proposes to allow creditors complete flexibility in the way in which they treat such amounts for purposes of Regulation Z disclosures and calculations. Creditors may make disclosures without taking these amounts into account, or may reflect the rebates in the disclosures. For example, where the seller and customer agree to apply the amount of a rebate to the price of the goods, the amount may be included, at the creditor's option, in the downpayment disclosed to the customer. Under the proposal, however, the creditor is not required to reflect the rebate in the disclosures in any way.

Closed-end credit. This definition is unchanged from the May proposal.

Consumer. This definition has been revised from that in the May draft to clarify that comakers, endorsers, guarantors, sureties and similar persons must be natural persons. A number of commenters requested this change to insure that the disclosures need not be given to business entities. The Board is particularly interested in receiving comment on the impact, if any, of this change on open-end credit plans.

Consumer credit. This definition has been slightly revised from that in the May proposal. The word "extended" has been added with no change in meaning intended.

Consummation. This definition represents a significant departure from both the May proposal and longstanding staff interpretations of the current regulation. Under this proposal, consummation occurs only when the consumer becomes contractually liable on the obligation as determined by state law. The payment of a nonrefundable fee has been eliminated from the definition as a standard for determining when consummation occurs.

Credit. This definition is essentially unchanged from the definition in the May proposal, except that the phrase "granted by a creditor to a consumer" has been deleted as unnecessary.

The Board recognizes that, while the concept of credit is central to Truth in Lending, the regulatory definition may be difficult to apply in particular fact situations. Even though a precise, easy-to-apply standard cannot be devised to resolve all questions, the Board believes that some guidance can be offered on the definition's applicability to certain recurring fact situations.

A review of the numerous staff and Board interpretations in this area highlights several factors that can be used in analyzing whether a particular transaction is considered credit for Truth in Lending purposes.

For example, in the Board's view, certain transactions do not involve the voluntary incurring of debt; others do not involve the *right* to defer a debt. Tax liens, tax assessments and court judgments would come with this category. However, where the consumer obtains third-party financing for such obligations (for example, obtaining a loan from a credit union to pay off a judgment to a bank), the third-party financing would constitute credit for Truth in Lending purposes.

Where the consumer's payments generally parallel the value received from the other party, with no continuing obligation to make payments, the Board would not view this as an extension of credit. For example, certain insurance premium plans involve payment in installments; each installment represents payment for insurance for a certain future period of time. If the consumer fails to make a payment, no coverage would be provided for that period. There is in this case no obligation for the consumer to continue making payments. Similarly, in a home improvement transaction involving progress payments, the consumer simply pays the value of work completed as the work progresses, with no contractual obligation to continue payments.

Certain types of pledge transactions may be viewed as cash sales rather than credit transactions. One example is a transaction involving a pawn shop. In this situation, the consumer sells goods to another party for cash, with the understanding that the goods may be repurchased within a certain period. While staff letters have held such transactions to be credit, the Board believes they are more analogous to cash sale transactions, since the customer normally has no obligation to repay the funds acquired in the transaction.

Board Interpretation § 226.201 exempts layaway plans from the coverage of the regulation, if the consumer may cancel the purchase and receive a full refund of any amounts paid toward the cash price. This interpretation has not been incorporated into the new regulation and the Board believes that any specific reference to such transactions is unnecessary in the regulation. In the Board's view, layaway plans do not involve an extension of credit and are thus beyond the scope of the regulation.

Similarly, the creation of an option contract and the issuance of a letter of credit do not, in the Board's view, constitute extensions of credit.

Credit card. This definition is unchanged from the May proposal.

Creditor. The first paragraph of this definition has been significantly revised to create a new standard for determining what activities make a person a creditor, based on the frequency of those activities. The current regulation requires that credit extensions occur "regularly" and "in the ordinary course of business" in order to bring the credit extender within the definition. These standards have proven difficult to apply, particularly in cases in which the main activity of a credit extender is unrelated to credit.

In order to create a clearer standard for determining who has disclosure responsibilities under the regulation, the Board now proposes a test based on the frequency of the credit extensions. If a person has made more than the specified number of consumer credit extensions in the calendar year preceding the transaction in question, that person is a creditor and must make disclosures. The purpose of this test is to apply the regulation to those persons that extend credit often enough that they can be expected to be able to provide disclosures and for whom the cost of doing so is more commensurate with the benefit to consumers of receiving disclosures. The number is set at 25 for most transactions. A lower number, five, is proposed for transactions secured by a dwelling, since these generally involve larger amounts of credit and represent the most important consumer credit decision. The Board solicits comment on this approach.

This definition is also revised to require a *written* agreement to pay in more than four installments, in order for a person offering a credit extension without a finance charge to be considered a creditor. This revision is proposed in order to exclude from the regulation's coverage very informal arrangements not invoving a finance charge, such as those frequently made by doctors, dentists, and other providers of professional services. However, when a finance charge is imposed or when the agreement to repay in more than four payments is written, those arrangements would come within the definition.

Finally, a parenthetical has been added to clarify that a downpayment is not considered an installment for purposes of the four-installment rule.

A number of commenters requested an explicit statement regarding who is the creditor in a transaction in which a seller of goods assigns its customer's installment sales contract to a financial institution. It is clear that Congress, in amending the statutory definition, intended the seller in these situations to be the creditor. This would be true even when the seller routinely assigns contracts in this fashion and the financial institution had provided a prior credit approval.

Paragraphs (4) and (5) of this definition correspond to § 226.2(q)(4) of the May draft, and impose creditor responsibilities on card issuers. Paragraph (4) provides that card issuers that extend open-end credit or consumer credit that does not involve either a finance charge or an agreement to repay in more than four installments are creditors for purposes of Subpart B of the regulation. As all disclosures are to be made only as applicable, a card issuer that extends consumer credit without a finance charge, for example, would omit finance charge disclosures. The Board contemplates that other general subparts of the regulation regarding such areas as scope, definitions, finance charges, Spanish language disclosures, record retention, and use of model forms also apply. Paragraph (5) sets forth the responsibilities of a card issuer extending closed-end credit, and is analogous to § 226.8(q) of the present regulation. Again, the Board believes that the general provisions also apply to these creditors. The Board solicits comment on extending coverage to card issuers in this manner.

Credit sale. This definition is unchanged from the May proposal. Although some commenters asked that the definition be expanded to cover leases that may be terminated at any time without penalty, the Board does not believe that such transactions constitute credit sales.

Downpayment. This is a new definition, which has been added to § 226.2 for ease of reference. The term is used in §§ 226.18(b) and 226.18(j), as well as in the credit sale model form in Appendix G(1). As in the current regulation, a downpayment may include both a cash downpayment and the value of any trade-in or other property used to reduce the deferred price of the goods.

The second portion of the definition incorporates the substance of current Board Interpretation § 226.504, outlining the proper treatment of deferred portions of the downpayment, often referred to as "pick-up payments." Unlike the current rule, however, the definition would not require creditors to label the deferred portion as a pick-up payment or to reflect the payment in any manner in the payment schedule disclosure under § 226.18(g). If the deferred amount meets the test outlined in the definition, it would be treated as a downpayment for purposes of calculating the amount financed under § 226.18(b) and for purposes of disclosing the total sale price under § 226.18(j). Any amounts which do not quality for this treatment would be reflected as part of the amount financed and payment schedule and taken into account in calculating the annual percentage rate.

Dwelling. This definition has been revised from that in the May proposal to clarify the scope of its coverage. It includes all residences, which excludes structures such as recreational vehicles not used as a residence. The reference to "mobile home or trailer" has been taken out of the first sentence, because its placement there created some ambiguity. These items have been added to the second sentence as examples of dwellings. However, mobile homes and trailers are included in the definition only if they are used as residences, just as is the case with condominiums and cooperatives.

The revision of the first sentence also makes clear that the phrase "whether or not attached to real property" applies to all residential structures, not just mobile homes.

Open-end credit. This definition is substantively unchanged from the previous proposal. The proposed definition attempts to identify the difference between open-end and closed-end credit and to accommodate problems associated with particular credit plans.

Footnote 1 of the May proposal has been deleted from the present proposal because it simply offers additional guidance, rather than imposing a substantive requirement or relieving liability. That footnote provided that the creditor of an open-end credit account may verify credit information regarding the consumer from time to time without affecting the classification of the account as open-end credit. The Board intends to preserve this position in the commentary.

Paragraph (1) provides that the creditor must reasonably contemplate repeated transactions. A number of commenters asked for guidelines for determining when a creditor may reasonably contemplate multiple transactions. The proposal implements the statutory amendment intended by Congress, according to the Senate Report on S. 108, to curb the use of spurious open-end credit. In particular, the committee believed that consumers should receive essential cost disclosures, such as the finance charge and the total of payments, where a creditor makes what is likely to be a one-time credit extension; for example, when the initial transaction is the purchase of a home improvement, an automobile, or an item sold on a door-to-door basis.

The second part of the test for open-end credit is substantively unchanged from the May proposal. The present proposal has been clarified to indicate that fees imposed irrespective of a consumer's payment schedule are not penalties or additional charges for payment in full. For example, a minimum finance charge of $.50 every month is not an additional charge for full payment, because the charge is a function of the account activity rather than of payment in full. This requirement reflects, in part, the distinction that in open-end credit plans, unlike many traditional closed-end credit extensions, there is no specific payment schedule under which finance charges and the total of payments can be calculated in advance. In light of the fact that paragraph (3) requires calculation of any finance charge on the basis of the outstanding unpaid balance, in contrast to a precomputed finance charge on the basis of a payment schedule, the Board solicits comment on the necessity of also retaining the test in paragraph (2).

The May draft deleted the current regulatory rule that open-end credit be payable in installments. Some commenters were concerned that the removal of this requirement might subject traditional 30-day accounts to the regulation. Of course, if credit is not payable in four installments, the extension does not fall under the regulation, unless a finance charge may be imposed or a credit card is involved.

Paragraph (3) remains unchanged from the previous proposal. The Board solicited comment on whether it should define as open-end credit certain plans not subject to a finance charge from time to time on the outstanding unpaid balance. After considering the comments and what appears to be the congressional intent, the Board believes that when no finance charge may ever be imposed, the plan is not open-end credit. When the plan contemplates purchases from time to time, series of sales disclosures under § 226.17(g) may be appropriate.

Paragraph (4) of the definition remains unchanged from the May proposal. The Board contemplates that a line of credit may be considered self-replenishing even if the plan itself has a fixed

termination date, if within the time the plan is in existence the consumer may use the line, repay, and reuse the credit without specific approval for each extension beyond verification of credit information such as the consumer's continued income and employment status. This factor is intended to assist creditors in distinguishing open-end credit from a series of advances made pursuant to a loan commitment. Under such a commitment, for example, a creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000, no more money is advanced under that particular agreement even if there has been repayment of a portion of the debt.

The May proposal also provided that consumer credit extended by use of a credit card would be considered open-end credit for limited sections of the regulation. This proposal deletes that provision. All of the special rules relating to credit card issuers are now contained in the definition of "creditor." The Board solicits comment on the necessity of making credit extended by use of a credit card open-end credit for limited purposes, in order to assure that card issuers comply with all applicable open-end credit requirements.

Unlike the May proposal, the present regulation specifically excludes from the definition of open-end credit negotiated advances under open-end real estate mortgages and letters of credit. The Board solicited comment on whether these exclusions are necessary and on the impact of omitting them from the regulation. Commenters presented different programs to the Board using the terms "open-end real estate mortgages" and "letters of credit." The Board believes that each plan must be independently measured against the definitions of consumer credit, open-end credit and closed-end credit, regardless of the terminology used in the industry to describe the plan. The fact that a particular plan is called an "open-end real estate mortgage," for example, is not determinative of its coverage as open-end credit. Therefore, no special exclusion is contained in the present proposal.

A number of commenters also asked whether certain special loan programs that make available many different features may be characterized as open-end credit. Under some existing programs, for example, a creditor might offer to extend credit under ten different rate structures, depending on whether a particular extension is unsecured or secured, and the nature of any such security. Furthermore, such a plan may have transaction charges for certain types of extensions (such as cash advances) but not for others. Some of these plans may have different bases on which to calculate minimum payments for different types of credit extensions. These factors in and of themselves do not preclude a plan from being open-end credit. The Board cannot rule on each individual program, and believes that no matter how complex a plan, the test of whether it is open-end remains the four-prong test enunciated in the regulation. For example, it would be more reasonable for a thrift institution chartered for the benefit of its members to contemplate repeated transactions from a member on a single account than it would be for an automobile dealer to make the same assumption about its customers. Furthermore, balances outstanding under the plan would be payable in full at any time without penalties that would tend to inhibit such prepayment; finance charges would be computed from time to time on the outstanding unpaid balance rather than precomputed; and the line available to the consumer would be reusable to the extent that the consumer repays the outstanding balance.

Periodic rate. The May proposal provided that the periodic rate may be stated as the decimal equivalent of a percentage rate as well as a percentage rate. As the comments indicated no necessity for permitting disclosure of the decimal equivalent, or any difficulty in converting to a percentage rate, the present proposal deletes the alternative.

The Board specifically solicited comment on prohibiting the use of 1/360th of a year as a period for which a rate may be applied. The present proposal does not by its terms prohibit the use of such a period. However, the Board contemplates that the application of this rate to a balance would be made in such a manner as to disclose the annual percentage rate with the degree of accuracy required in the regulation. Moreover, the Board proposes to take the position that the creditor would not be permitted to identify such a subdivision as a "daily" periodic rate. The Board contemplates that the definition by its terms excludes an initial one-time transaction charge, even if the charge is computed using a percentage of the transaction amount.

Person. This definition is unchanged from the May proposal.

Personal property. This definition is unchanged from the May proposal.

Prepaid finance charge. This definition was previously defined in § 226.11(f)(2)(i)(C) of the May proposal. For ease of reference, that definition has been added to § 226.2. The concept of "prepaid finance charge" is contained in § 226.8(e)(1) of the current regulation, and the new definition is based closely on that provision. This definition has been slightly expanded to clarify that a finance charge withheld from proceeds after consummation of a transaction is still considered a prepaid finance charge. For example, in a multiple-advance construction loan, a loan fee or other finance charge withheld from each advance as it is drawn down constitutes a prepaid finance charge, despite the fact that consummation has already occurred.

Regular price. This is a new definition and has been added to § 226.2 for ease of reference. The term is used in §§ 226.4(f) and 226.12(g). It was previously defined in footnote 15 to § 226.4(f) of the May proposal. The words "advertised price" have been added, making an advertised price synonymous with "regular price." The Board does not intend for an advertised price to be regarded as the "regular price," however, if it is clearly disclosed that the advertised price is not available to credit card purchasers.

The last sentence in footnote 15, providing that payment by check, draft, or similar means that may result in the debiting of a cardholder's open-end account shall not be considered payment made by use of that account, has been deleted as explanatory material; it will be incorporated into the Board's commentary to the regulation.

Required deposit balance. This definition, as well as the concept of a required deposit balance, has been deleted from the proposed regulation. While the Board recognizes that taking deposits into account in calculating the cost of credit may make the resulting numbers marginally more precise, it questions whether the complexity that the concept has produced in the regulation, interpretations, and calculations outweighs its utility.

In the May draft, the Board proposed to limit the definition of required deposit balance, primarily by excluding deposits on which more than nominal interest or dividends are earned. Although the comments generally favored limiting the definition, many of the commenters argued that the new standard presented many of the same difficulties as the current regulatory definition.

In light of its own experience with the concept of a required deposit balance and the comments on this matter, the Board now proposes to delete this item both as a disclosure and as an amount to be taken into account in computing an annual percentage rate. If this is done, conforming changes would also be made

to Supplement I to the regulation (§ 226.40).

The Board specifically solicits comment, however, on whether the concept of required deposit balance should be retained in cases where the amount of the deposit is so large that it would have a significant effect on the cost of credit. The term, for example, could be defined to include deposits exceeding a specified percentage of the amount of credit extended.

Residential mortgage transaction. This definition is unchanged from the May draft. In response to comments on this definition, the Board wishes to emphasize that the definition is not limited to first lien transactions or to those involving a principal dwelling.

Security interest or *security.* This definition is significantly narrower than that contained in the May proposal. It explicitly excludes from coverage many incidental interests in property that have been found to be security interest by various courts in the past. The board believes that this narrow reading properly implements the congressional intent to restrict this item to a simple but meaningful concept. This intent is evidenced by the language in the report on S. 108 of the Senate Committee on Banking, Housing and Urban Development that the committee expected that a loan secured by a car:

> * * * would require a statement indicating that the loan is secured by an automobile but would not require a listing of incidental or related rights which the creditor may have such as insurance proceeds or unearned insurance premiums, rights arising under, or waived in accord with state law, accessions, accessories, or proceeds.

The proposed definition makes a distinction between disclosure and rescission rights. Interests arising by operation of law (including a right of setoff) would not need to be disclosed as security interests; however, if such an interest (e.g., a mechanic's or materialman's lien) in a consumer's principal dwelling were acquired by a creditor, the transaction could be subject to the right of rescission.

The definition continues to include the usual kinds or security interests, for example, UCC security interests, real property mortgages and deeds of trust.

State. This definition is unchanged from the May draft.

(b) *Rules of construction.*

Sections 226.2(b)(1)–(5) contain the rules of construction that were previously found in §§ 226.2(ff), (gg), (hh), and (ii), respectively, of the May draft, with one addition. Paragraph (b)(3) has been added to make clear that "the act" refers to the Truth in Lending Act, unless otherwise apparent from the context. This rule eliminates the need for a complete citation to the act each time that term is used in the regulation. Paragraph (b)(4) deletes the phrase "to the extent applicable," because it is superfluous.

Section 226.3—Exempted transactions.

Except for the addition of a new paragraph (f) creating an exemption category for home fuel budget plans, § 226.3 is substantively unchanged from the May proposal.

Section 226.3(a), dealing with the business, agricultural, and organizational credit exemption, now contains a specific reference to commercial credit. In addition, the reference in the May proposal to an extension of credit "to a person other than a natural person," meaning credit to an organization, has been replaced by a reworded, separate subparagraph; it makes direct reference to governmental credit as one of the types of credit exempted.

Footnote 1 provides that credit exempted under paragraph (a) is still subject to the provisions of § 226.12, regarding issuance of credit cards and consumer liability for their unauthorized use. In the May proposal, this material was contained in the text of the paragraph.

There is an extensive definition of "agricultural purpose" in the statutory amendments to Truth in Lending. In the May proposal, that definition was incorporated into the regulation by means of Footnote 3 to § 226.3(a). In order to streamline the regulation, the Board has decided to delete that footnote. Its substance will be incorporated into the official commentary. As noted in the May proposal, the exclusion applies to a transaction involving real property that includes a dwelling, if the transaction is for agricultural purposes.

Although business and commercial purposes are not defined in the regulation, it is contemplated that the commentary will incorporate the substance of Board Interpretation § 226.302, which establishes the rule that business or commercial credit includes credit extended in connection with a dwelling containing more than four family housing units.

Several commenters asked that the Board define the term "primarily" as used in paragraph (a). The Board believes that each transaction must be looked at as a whole and evaluated to determine whether it constitutes consumer credit requiring disclosures. The creditor itself is normally in the best position to make this subjective determination. Where some question exists as to the primary purpose for a credit extension, the Board believes the better approach would be for the creditor to make the required disclosures.

The Board's staff has given some guidance in the past for determining whether the purpose of the credit is primarily business/commercial. For example, if a consumer purchases a single family dwelling for rental purposes, the credit transaction could be either business or consumer credit. Factors to consider might include: (1) The ratio of the rental income to the total income of the consumer, (2) the size of the transaction, (3) the degree to which the borrower will personally manage the property, and (4) whether the borrower's primary occupation is closely related to the rental of the property. This list is not all-inclusive and is intended to suggest the types of factors that a creditor should consider, since each transaction will merit an individual analysis. If there is a business purpose, however, the credit is business credit and is therefore exempt even if it is secured by the borrower's personal residence.

Paragraph (b) has been revised to include a reference to "personal property" (such as a mobile home, which may be classified as personal property in some states) used as the principal dwelling of the consumer, in place of "a dwelling."

Several commenters were concerned that cable television might not be exempt under the language of paragraph (c). The Board has added the phrase "or similar" following the word "radio" to resolve the matter.

In response to comments about the exemption for securities credit, the Board has reverted in paragraph (d) to the language used in the current regulation. Paragraph (e) was also changed in response to concerns expressed by the commenters; the word "consumer" replaces "lessee" in subparagraph (2)(ii).

A new exemption appears in this proposal. Currently, home fuel budget plans may or may not be consumer credit, depending on how they are structured. The Board is proposing a specific exemption for them. Under such plans, the fuel dealer generally estimates the total cost of fuel for the season, bills the customer for an average monthly payment, and makes an adjustment in the final payment for any difference between the estimated and the actual cost of the fuel. Fuel is delivered as needed, no finance charge is assessed, and the customer may withdraw from the plan at any time. The Board believes a nominal charge to

cover the billing costs would not disqualify a budget plan for exemption, but will reevaluate the matter if it becomes aware of abuses in this area. The Board solicits comment on this proposed new exemption and on whether any other comparable plans should be considered for exemption.

During the last comment period, the Board received several requests—all from one geographic area—for a special exemption for consumer credit extended by trusts. In support of a proposed exemption, the commenters stated that loans made by trusts are unusual in terms (for example, low interest rate, no repayment schedule, irregular payments), that disclosures are therefore difficult to make, and that trust department personnel are generally unfamiliar with the Truth in Lending disclosure requirements. The Board solicits comment on whether compliance with Regulation Z poses an undue burden for trusts, whether it is a national or an isolated problem, and whether the same rationale for exemption might apply to profit sharing plans, employee benefit trusts, pension plans, and retirement plans. The Board would welcome recommended regulatory language if such an exemption is supported. In particular, the Board seeks any industry definitions that may exist of what is encompassed by the various forms of fiduciary accounts mentioned above.

Section 226.4—Finance charge.

Section 226.4 provides rules for determining the finance charge in open-end and closed-end credit transactions. While the format of this section is similar to the May draft, the current proposal reflects several substantive changes.

(a) *Definition.* Section 226.4(a) incorporates a tolerance for calculation and disclosure of the finance charge, similar to the annual percentage rate tolerance in §§ 226.14 and 226.22. Although a general tolerance for the finance charge has never been provided before, the concept is reflected in both the act and the current regulation in several ways. The Board is authorized by section 121(d) of the act to provide a tolerance for numerical disclosures other than the annual percentage rate. For purposes of administrative enforcement, Congress specifically authorized a finance charge tolerance in section 108, regarding restitution for understatements. The current regulation and the May proposal also contain several rules (§ 226.11(d) (3) and (4) of the May draft) which allow some margin of error in finance charge disclosures. These rules, however, are of limited applicability, since they are tied to specific causes.

In view of the congressional mandate to simplify the regulation and to ease the burden of compliance, the Board is proposing a tolerance for finance charges, based on the tolerance provided in § 108 of the act. Under the proposal, a finance charge would be considered accurate if the amount disclosed did not vary from the exact finance charge by more than the dollar equivalent of a ⅛ of 1 percentage point variation in the annual percentage rate. The Board solicits comment on this proposal, particularly on the amount of the tolerance.

Several commenters requested that the Board make explicit in the definition the position reflected in several staff opinion letters, including official staff interpretation FC–0054. Those letters provide that charges absorbed by the creditor as a cost of doing business, rather than separately imposed on the consumer, are not encompassed by the definition. While the new definition is intended to reflect this concept, the Board does not believe that the regulation need explicitly state this position.

The definition also continues to reflect the Board's policy that a charge imposed uniformly in cash and credit transactions (such as sales taxes, licenses, or registration fees) is not within the scope of the finance charge definition. However, the examples given in paragraph (a) of the May proposal have been deleted as unnecessary.

(b) *Examples of finance charge.* Section 226.4(b) incorporates both editorial and substantive changes. The caption for the paragraph has been amended to emphasize that the list of charges is illustrative rather than exhaustive.

The reference to "other system" of additional charges has been deleted from paragraph (b)(1) inasmuch as the charges listed in that paragraph sufficiently identify the types of charges intended to be covered.

A number of commenters asked the Board to reconsider its longstanding position that transaction charges and account charges of the type described in paragraph (b)(2) constitute finance charges. In the Board's view, these charges are encompassed in the definition of the finance charge and should be treated as such.

Paragraph (b)(3) retains a reference to an assumption fee as an example of a finance charge. An assumption fee would constitute a finance charge only when an assumption actually occurs and a fee is imposed, not at the time of the initial transaction.

Paragraph (b)(4) has been amended by adding application fees to the list of charges included in the finance charge. If an application fee covers charges that are explicitly excluded from the finance charge, such as a credit report fee in a real property transaction, that portion of the application fee would not constitute a finance charge. As a general rule, however, the proposal takes the position that application fees represent a cost of credit and should be included in the finance charge. Comment is solicited on this matter.

Paragraph (b)(5) has been amended by deleting the reference to single interest insurance. While single interest insurance would normally be included in the finance charge, unless specifically exempted by paragraph (d), a specific reference in paragraph (b)(5) seems unnecessary. Several commenters requested that the Board reinstate § 226.4(h) of the current regulation, permitting creditors to rely on the rates and classification in effect at the time of disclosure in determining the amount, unless the creditor has reason to know of any change. In the Board's view, a special rule for determination of these amounts is unnecessary; the general requirements regarding the basis for making disclosures, as set forth in §§ 226.5 and 226.17, should be applied.

The explanatory material that was contained in footnotes 4, 5, and 7 of the May proposal (regarding the premium amount to be included in the finance charge) and in footnotes 6 and 8 (concerning the meaning of "written in connection with") has been deleted from this draft. The substance of those footnotes, which continues to represent the Board's position, will be incorporated into the official commentary on the regulation.

Paragraphs (b)(5), (7) and (8) have been amended by adding the phrase "or other charge" after the word "premium." This represents a return to the terminology used in the current regulation.

Paragraph (b)(9) is unchaged from the May proposal. As noted in the earlier draft, present § 226.8(o), which provides special treatment for discounts offered for prompt payment of a credit obligation, has been deleted since trade discounts covered by that provision are no longer considered finance charges.

(c) *Charges excluded from finance charge.* Section 226.4(c) sets forth the charges that are excludable from the finance charge. This paragraph incorporates specific exceptions now found in § 226.4(c), (d), and (e) of the current regulation and current Board Interpretation § 226.407.

Paragraph (c)(1) excludes charges that are imposed for actual, unanticipated late payment. The Board considered incorporating into this provision the concept contained in Board Interpretation § 226.401. That interpretation establishes the rule that, in certain cases, if a seller imposes a late payment charge while continuing to extend credit to the consumer, the charge imposed for late payment is a finance charge for purposes of Regulation Z.

Upon reconsideration of this matter, the Board now believes that the further extension of credit to the consumer should not be determinative. It is only one of the factors that must be taken into account in deciding whether the charge is a bona fide late payment charge. While this change in position is not reflected in the regulation, it is contemplated that this revised interpretation will be included in the official commentary.

Paragraph (c)(2), as revised, differs from both the May proposal and § 226.4(d), its counterpart in the current regulation. Previously, overdraft charges were excluded from the finance charge unless there was a written agreement regarding the payment of the checks and the imposition of the charge. Under this proposal, an overdraft charge is exempt only if it relates to an inadvertent overdraft in a checking or a similar type of account. The Board believes that a charge imposed for honoring an instrument under any agreement between the institution and the consumer is a charge imposed for a credit extension and fits the general definition of a finance charge, whether or not the charge and the honoring of the check are reflected in a written agreement. The characterization of the charge will thus depend on whether "credit" has been extended, within the meaning of the regulation.

Paragraph (c)(3), regarding participation fees, is based on current Board Interpretation § 226.407 and has been changed in three ways from its counterpart in the May draft. First, the term "membership" has been replaced by "participation," which is a broader term encompassing any fees for access to a credit plan. Second, the paragraph has been broadened to apply to any credit plan, not merely credit card plans. The exception does not depend on the nature of the credit plan, but on the fact that the fee is not tied to a specific credit extension and is a condition of access to the credit plan itself. Third, the paragraph has been revised to clarify that such fees may be assessed on either a periodic or an annual basis.

Paragraph (c)(4), exempting certain realty charges, is similar to the May draft and reflects § 226.4(e) of the current regulation. The introduction expands the statutory language regarding the types of transactions to which the exceptions apply, by the addition of the phrase "or a residential mortgage transaction." This would include mobile home transactions, and similar credit extensions which are functionally the same as real estate transactions, even if state law characterizes the property as personal. In the Board's view, this change in language carries out the congressional intent to treat mobile home transactions and similar types of credit extensions in the same manner as traditional realty transactions.

Paragraph (c)(4)(i) reflects the current regulation by reincorporating the phrase "or similar purpose." The Board believes that the May draft may have been unnecessarily narrowed by the elimination of that language.

Paragraph (c)(4)(ii) adds "reconveyance" document fees to the list of documents to which that provision applies. Under this proposal, fees charged for the termination of security interests would be treated in the same manner as fees for the creation of a security interest. The Board solicits comment on this matter.

Paragraph (c)(4)(iii) is essentially unchanged from both the May draft and the current regulation, but the Board wishes to address two issues relating to this provision. First, the Board believes that the fees described need not be paid to third parties in order to be excluded, but may be assessed by a creditor for services performed by its employees. For example, a creditor may exclude an appraisal fee from the finance charge under this paragraph, even though the appraisal is conducted by the creditor's own staff. Second, a credit report fee may include a charge for the creditor's internal verification of information from third parties such as credit bureaus.

Paragraph (c)(5), which has no counterpart in the May proposal, is based in part on current Board Interpretation § 226.406. Seller's points normally are imposed on the seller in a real estate transaction, but may be passed on indirectly to the buyer in the form of a higher sales price. Because it is extremely difficult to determine whether such charges have actually been imposed on the buyer in an individual case, the current Board interpretation allows creditors to include seller's points in the finance charge as a matter of course in all cases, even if the points were not actually passed on. For purposes of comparison among various credit sources, a uniform rule regarding these charges is desirable and the Board proposes to exclude such charges from the finance charge in all cases. Comment is solicited on this issue.

Paragraph (c)(6) has been added to incorporate the substance of proposed Board Interpretation § 226.408, which was published by the Board in August 1978. Certain federal and state laws mandate a percentage differential between the interest rates on a time deposit and a loan secured by such deposits, which may result in the forfeiture by the consumer of some of the interest that otherwise would be earned on the deposit. This paragraph provides that the lost interest need not be included in the finance charge in such transactions. The Board specifically solicits comment on this proposal, particularly with regard to the issue of whether its application should be limited to an interest reduction imposed because a rate differential is required by law.

(d) *Insurance.* This paragraph sets forth the procedures for excluding credit life and property insurance premiums from the finance charge. It has been substantially changed from both the May draft and the current regulation in several aspects, as discussed below. In addition, several questions regarding the location of the disclosures called for by this paragraph in closed-end credit transactions are now addressed in § 226.17 of this regulation.

Paragraph (d)(1) has been revised to permit disclosure of the amount of the premium on a unit cost basis. This represents a departure from the current regulation, which generally has been interpreted as prohibiting disclosure of cost on this basis; the Board specifically solicits comment on this matter. Paragraph (d)(1)(iii) has been amended by adding a second sentence, allowing any consumer, whether or not an insured party, to sign the statement indicating a desire for the insurance. The words "or initials" have been added to make clear that either a signature or initials will satisfy the requirement.

Paragraph (d)(2) revises the special rules set forth in the May proposal for single interest insurance, and eliminates the distinction between blanket vendor's single interest insurance and ordinary single interest insurance.

Footnote 2 now incorporates current Board Interpretation § 226.404, permitting vendor's single interest insurance to be excluded from the finance charge if the insurer waives all right of subrogation against the consumer. Single interest insurance, as that term is used in the proposal, refers only to the types of coverage that would

generally be included under the term "vendor's single interest insurance." The Board is aware that certain comprehensive insurance policies may include a variety of coverages, such as repossessed vehicle insurance, holder-in-due-course insurance, and instrument non-filing insurance, as described in Public Information Letter 1075. Those types of coverages do not constitute single interest insurance for purposes of the regulation.

Footnote 3 to paragraph (d)(2) makes clear that a creditor's reservation of the right to refuse an insurer, on a reasonable basis, does not by itself make the provisions of this section inapplicable. Paragraph (d)(2)(ii) has been expanded to permit disclosure of insurance premiums on a unit cost basis. This amendment reflects the approach taken in the revision to paragraph (d)(1), regarding the cost of credit life insurance.

(e) *Certain security interest charges.* Section 226.4(e) is similar to the May draft, with the addition of the phrase "taxes and" to paragraph (e)(1) to clarify that the types of charges described in that paragraph may include taxes as well as fees. The charges described in paragraph (e)(1) may be aggregated, rather than itemized according to the specific fees and taxes imposed. For purposes of closed-end credit disclosures, § 226.17 permits creditors to itemize the charges in paragraph (e) either separately or with other disclosures.

The caption has been changed in an effort to more accurately reflect the coverage of this paragraph, which addresses only costs associated with security interest. Comment is welcome on any other phrase, such as "Filing fees; nonfiling insurance," which might describe more precisely the charges to which paragraphs (e)(1) and (e)(2) apply.

(f) *Discounts.* This section corresponds to § 226.4(i) of the current regulation, and reflects several changes from the May proposal. Most of the changes are organizational, to make the provisions clearer and easier to understand.

In paragraph (f)(1) the language has been changed to comply with the statue, which states that a discount meeting the requirements of this provision "shall not constitute" a finance charge. As written in the May proposal, the exclusion of a discount that met the requirements of paragraph (f) appeared to be optional with the creditor.

Paragraph (f)(1)(ii) of this proposal corresponds to (f)(2) of the May proposal. The word "all" has been deleted as unnecesssary because of the phrase "whether or not they are cardholders" following "prospective purchasers." This change attempts to clarify that a merchant may offer a discount that is limited to members of a specific organization or to prospective purchasers who have an account at a particular financial institution. Such a discount is not subject to treatment under this provision. The restriction imposed by this provision applies only to a discount to induce payment by a means other than by use of an open-end credit card account and requires that such discounts be available to non-cardholders as well as cardholders.

A discount offered to a subgroup of purchasers or based upon any criteria other than cash versus credit would not be considered a finance charge under Regulation Z. If a merchant further limited the availability of the discount (within such a subgroup) based on whether a person paid for a purchase by cash or credit card, the discount would not become a finance charge subject to Regulation Z since other cash customers (who do not belong to the subgroup) pay the same price in a comparable cash transaction.

The language "in the seller's place of business" (in paragraph (f)(2) of the May proposal) and paragraph (f)(3) regarding advertising and telephone solicitations have both been deleted from § 226.4(f) of this proposal. These deletions do not represent a substantive change in the Board's position, however. In the Board's view, the material that has been deleted provided clarification of what is meant by "clearly and conspicuously." It is the Board's intention to incorporate the material into the official commentary.

In the Board's view, the "clearly and conspicuously" language of paragraph (f)(1) requires that a sign or display disclosing the availability of a discount be posted in the creditor's place of business. If a creditor solicits orders for property or services by other means (mail, telephone, advertising, etc.), and states in the solicitation or offer that consumers may pay by using a credit card or its underlying account, the creditor must also disclose the availability of the discount for payment in cash. In all situations involving a discount, the availability of the discount would have to be disclosed before the transaction had been completed by means of a credit card or its underlying account.

All of the footnotes to § 226.4(f) of the May proposal have been deleted or redesignated. The text of footnote 13 of the May proposal is now paragraph (f)(2), and implements the statutory provision to the effect that a discount excluded from the finance charge by virtue of this section shall not be a finance or other credit charge under state law.

Footnote 14 of the May proposal has been deleted as unnecessary; a discount for cash payment must meet all the conditions imposed by this section in order to be excluded from the finance charge.

Footnote 15 of the May proposal, defining "regular price," has been incorporated into § 226.2, which contains the definitions. Since the definition of regular price applies to this section and to § 226.12(g), this placement seems more appropriate.

Footnote 16 of the May proposal provided that a merchant may limit the availability of cash discounts based on type of property or service, a particular location of the merchant, and other distinctions not tied to a cash-versus-credit concept. This footnote has been deleted; its substance will be included in the commentary of the regulation.

(g) *Prohibited offsets.* Section 226.4(g) corresponds to § 226.4(f) of the current regulation and is the same as the May proposal.

Subpart B—Open-End Credit

In the May proposal, the provisions relating to open-end credit were in §§ 226.5 through 226.10. Section 226.5 of the May proposal (Disclosures) has been divided and redesignated to facilitate the regulation's use; it represents § 226.5 through 226.11 of this proposal.

Section 226.6 of the May proposal (Credit card transactions; special requirements) has been retitled (Special credit card requirements) and redesignated § 226.12.

Sections 226.7 of the May proposal (Billing error resolution), 226.8 (Determination of annual percentage rate), 226.9 (Right of rescission) and 226.10 (Advertising) have been redesignated §§ 226.13, §§ 226.14, §§ 226.15, and §§ 226.16, respectively.

Section 226.5—General disclosure requirements.

As did the May proposal, this proposal assembles in one place the general housekeeping requirements relating to open-end credit.

Proposed §§ 226.5(a) (Form of disclosures) and (b) (Timing of disclosures) correspond to the May proposal's §§ 226.5(a)(3), (a)(4) and (a)(5). Proposed paragraph (a) corresponds in part to paragraph (a)(3) (Time and form; general) of the May proposal. Proposed paragraph (a)(1) corresponds to paragraph (a)(3)(i) of the May proposal. The second sentence of paragraph (a)(3)(i) of the May proposal has been deleted as unnecessary.

Language in paragraph (a)(3)(i) of the May proposal provided that appropriate identifying language may accompany required terminology, and the following examples of permissible identifying language were given: the rate applied to a balance on a daily basis may be described as the "daily periodic rate;" payments on a loan account may be described as "loan payments." This language and the examples have been deleted in this proposal as inappropriate regulatory material; the Board intends, however, to incorporate this material in the commentary. Also deleted from the May proposal was language permitting the pluralization of required terminology. This language is regarded as inappropriate regulatory material that the Board intends to include in the commentary.

In order to promote flexibility in designing forms and to reduce the incidence of technical violations, the Board specifically solicits comment on whether the required terminology of § 226.7 *Periodic Statements*, with the exception of "finance charge" and "annual percentage rate", should be deleted from the regulation.

Proposed paragraph (a)(2) corresponds to paragraph (a)(3)(ii) of the May proposal and deals with disclosing the terms "finance charge" and "annual percentage rate" more conspicuously in certain instances. Other than editorial changes and the deletion of the parenthetical listing examples of ways to satisfy the "more conspicuous" standard, the paragraph remains unchanged. The deleted parenthetical suggested the use of capitalization, asterisks, bolder type, underlining, or a contrasting color. The Board intends to incorporate these examples in the commentary.

Unlike the May proposal, the present proposal does not contain a rule governing the inclusion of additional information on the initial disclosure statement or on the periodic statement. The additional information rule appeared in the May proposal in §§ 226.5 (a)(4)(ii) and (a)(5)(i). While the Board believes that additional information may be included on the initial disclosure statement and on the periodic statement, in its view, no special provision governing inclusion of additional information on a disclosure statement is necessary in light of the general requirement that Truth in Lending disclosures be made clearly and conspicuously. As the parenthetical in paragraph (a)(4)(ii) of the May proposal indicates, additional information could include the agreement or contractual provisions, explanations, state law disclosures (that are not inconsistent) or promotional material.

Language in paragraphs (a)(4)(ii) and (a)(5)(i) of the May proposal provided that both the initial disclosure statement and the periodic statement could be more than one page, as long as the disclosures were made together. Paragraph (a)(4)(ii) also affirmed present staff position in providing that any multiple-page initial disclosure statement constitutes an integrated document. This language is not reflected in this proposal; the Board, however, believes that both initial disclosure statements and periodic statements can be more than one page, as long as the pages constitute an integrated document. The Board intends to include this position in the commentary.

The timing provisions for the initial disclosure statement and the periodic statement have been combined in proposed paragraph (b) (Timing of disclosures). It corresponds in part to paragraphs (a)(4)(i) and (a)(5) (ii) and (iii) of the May proposal.

Proposed paragraph (b)(1), like the May proposal, requires that the initial disclosure statement be provided before the first transaction is made under the plan. A commenter correctly pointed out, in the Board's view, that the initial disclosure statement must be provided to the consumer before any membership, participation, or loan application fee, or similar charge is imposed on the consumer.

Proposed paragraph (b)(2) (i) and (ii) set out the timing rules for providing periodic statements. It corresponds to paragraph (a)(5) (ii) and (iii) of the May proposal and is virtually unchanged from the prior proposal. The words "at least quarterly" have been deleted from the first sentence of paragraph (a)(5)(ii) of the May proposal as redundant; periodic statements have to be furnished for *each cycle* at the end of which the account has a debit or credit balance of more than $1 or on which a finance charge has been imposed, and a cycle can be no longer than quarterly. (See § 226.2 for the definition of "billing cycle" or "cycle.")

The last sentence of paragraph (a)(5)(ii) of the May proposal provides that a creditor's following its standard procedures for uncollectible accounts shall be evidence that the creditor has deemed the account uncollectible. That sentence has been deleted as inappropriate regulatory material; the Board intends, however, to include the position in the commentary.

Language has been added in proposed paragraph (b)(2)(ii) to parallel the current regulatory requirement that the 14-day periodic statement requirement relates only to the imposition of an *additional* finance or other charge. In response to numerous commenters, the Board wishes to clarify that charges imposed regardless of the timing of a periodic statement (for example, transaction charges or activity charges) are not affected by this prohibition. Clarifying language to this effect has been added to this provision.

The relief provision regarding the 14-day time limitation is now footnote 4 in the proposal. Numerous commenters requested that the Board add computer malfunction to this relief provision. In the Board's view, such an expansion would be inappropriate; doing so could subject the consumer to the imposition of finance charges far more frequently than would the other occurrences.

Proposed § 226.5(c) (Multiple creditors; multiple consumers) eliminates from the May proposal the general statements that a creditor must provide disclosures to a consumer. The Board believes that this material is unnecessary and has revised the paragraph to address only multiple-creditor and multiple-consumer situations, where specific guidance may still be needed.

The first sentence has been redrafted to reflect the Board's concern that a consumer receive a complete document or set of disclosures that incorporates all of the required credit disclosures for that open-end credit plan. When multiple creditors are involved in an open-end credit plan, the Board believes that creditors should have flexibility in the way in which that set of disclosures is provided. For example, the creditors may agree to designate one creditor to assume that responsibility or the creditors may join in designing a single set of disclosures. The change in the paragraph is not intended to absolve any creditor in such transactions from liability for failing to make disclosures. Regardless of the arrangements made between creditors, each creditor in the plan is legally responsible for providing the disclosures and any one of them may be subject to liability for violations. However, fewer questions are likely to arise regarding multiple-creditor situations because the revised definition of "creditor" will aid in the determination of creditor responsibilities.

As did the May proposal, this proposal in paragraph (c) implements the new statutory language which requires that the creditor make disclosures to a primarily liable consumer.

Section 226.5(a)(2) of the May proposal, summarizing what disclosures

must be made, has been deleted from this proposal as superfluous.

Proposed § 226.5(d) (Basis of disclosures and use of estimates) corresponds to § 226.5(a) of the May proposal. The first sentence of paragraph 5(a)(6)(i) of the May proposal has been deleted as unnecessary. The remainder of paragraph (a)(6)(i) has been combined with that of paragraph (a)(6)(ii) to form the new § 226.5(d).

Unlike the May proposal, which required that the disclosures reflect the terms actually agreed upon even if they differed from the written obligation, this proposal states that the disclosures shall be based on whatever constitutes the legally enforceable obligation between the parties. Consequently, in the preferential employee rate situation, the correct periodic rate/annual percentage rate disclosure would depend on what is legally enforceable. If the higher rate were the enforceable term, however, the creditor would not be prohibited from additionally indicating any concession made in a term. In a voluntary payroll deduction plan where the contract provides for payment of a certain amount by the last day of the month but the required amount is deducted biweekly from payroll, the contract term is undoubtedly the legally enforceable term and, therefore, represents the appropriate disclosure.

Proposed § 226.5(e) deals with the effect of subsequent events on disclosures already provided and corresponds to § 226.5(a)(7) of the May proposal. Paragraphs (a)(7)(i) and (ii) of the May proposal have been combined and paragraph (a)(7)(iii), dealing with the use of inserts to reflect a new term, has been deleted as inappropriate regulatory material. The Board intends, however, to incorporate this position in the commentary.

Section 226.6—Initial disclosure statement.

Proposed § 226.6 corresponds to § 226.5(b) of the May proposal and sets forth the rules regarding the disclosures to be made to a consumer upon opening an open-end credit account. The introductory paragraph remains the same except for the deletion of unnecessary language and a cite change.

Except for relocating some language to a footnote, proposed § 226.6(a)(1) corresponds and is identical to § 226.5(b)(1)(i) of the May proposal. It requires that a creditor give a statement of when finance charges begin to accrue. It is not intended that creditors disclose a specific date when finance charges will begin to accrue; a general explanation could be provided about finance charges beginning to run. For example, a creditor may disclose that a consumer has 30 days from the closing date to pay the new balance before finance charges would begin to accrue on any new purchases made on the account.

Proposed paragraph (a)(1) also requires that where no free period exists (i.e., no time period exists within which any credit extended may be repaid without incurring a finance charge), that that fact be disclosed. The Board wishes to clarify that this in no way requires use of the phrase "no free period"; rather, the requirement may be satisfied by stating, for example, "the finance charge begins on the date of each advance."

Proposed § 226.6(a)(2) corresponds to § 226.5(b)(ii) of the May proposal, and requires disclosure of any periodic rate that may be imposed, together with the range of balances to which it is applicable and the corresponding annual percentage rate. It remains substantially the same as the May proposal except for placing some language in a footnote. The Board would point out that, where credit plans involve the application of different periodic rates for different types of transactions (for example, purchases and cash advances) or where advances are secured by different types of collateral, the different rates and their applicability must be clearly disclosed.

Footnote 7 has been added to clarify a creditor's responsibilities under this paragraph for a variable rate program. In addition to providing the information required by paragraph (a)(2), the creditor must also indicate on the initial disclosure statement: (1) That the periodic rate(s) and annual percentage rate(s) are subject to change; (2) the conditions under which such rates may change; and (3) any limitations on the rates. In the Board's view, a creditor would not have to disclose any limitations imposed by law, such as state usury laws, and need not provide a change in terms notice under § 226.9(c)(1) at the time of the rate change.

The Board would point that, as in the case of closed-end credit variable rate transactions, these disclosures *must* be made to the consumer. In light of the increased popularity of variable rate plans, these disclosures are not optional, as present Board Interpretation § 226.707 seems to imply; their disclosure does not merely serve to relieve a creditor of the responsibility to provide a change in terms notice.

Proposed § 226.6(a)(3) corresponds to § 226.5(b)(1)(iii) of the May proposal; it deals with disclosure of the method of determining the balance upon which the finance charge may be computed. Language that provided an example of what should be included in the explanation has been deleted as unnecessary in light of the model clauses contained in the appendix in this regard.

In addition, footnote 18 of the May proposal has been deleted. That footnote incorporated Board Interpretation § 226.706 and provided that a creditor need not describe the manner in which payments and other credits are allocated. The footnote, like § 226.706 of the current regulation, intends to relieve the creditor of the responsibility to disclose either: (1) That payments are applied first to finance charges, then to purchases, and then to cash advances, or (2) that payments may be applied to late charges, overdue balances, and finance charges before being applied to the principal balances. The deletion of this footnote does not represent a change in the Board's position. Rather, it is considered to be inappropriate regulatory material. The Board intends to incorporate the position of the Board Interpretation and the May proposal's footnote in the commentary. (Footnote 25 to § 226.5(c)(6) of the May proposal, now § 226.7(f), has been deleted for the same reason.)

Proposed § 226.6(a)(4) corresponds to § 226.5(b)(1)(iv) of the May proposal; it reflects editorial changes and the deletion of an example as unnecessary. It also does not reflect footnote 20 of the May proposal. That footnote identified examples of finance charges other than periodic rates; it has been deleted as unnecessary, since these examples already appear in § 226.4. (Footnote 24 to § 226.5(c)(5) of the May proposal, now § 226.7(e), has been deleted for the same reason.)

Proposed § 226.6(b) corresponds to § 226.5(b)(2) and requires disclosure of any charges (other than finance charges) that may be imposed as part of the plan. Many commenters requested that the Board further define "other charges." The purpose of requiring that other charges be disclosed is to insure that consumers are aware of all significant charges that might be incurred as the result of entering into an open-end credit plan. Therefore, to some extent it is expected that creditors will make their own determination as to whether a charge is an "other charge" based on the relationship of the charge to the plan. While the Board is unable to provide an exhaustive list of "other charges," as requested by many commenters (given the variety of credit programs), it is

hoped that the following discussion will address most questions.

Footnote 21 of § 226.5(b)(2) of the May proposal listed examples of "other charges" and also listed examples of exclusions from the "other charges" category. As that footnote provided, in the Board's view, membership or participation fees in open-end credit plans are considered "other changes." Late payment charges, fees for providing documentary evidence requested under proposed § 226.13, over-the-credit-limit charges and fees listed in proposed §§ 226.4 (c) and (e) are considered "other charges." In contrast, fees charged for documentary evidence of transactions for income tax purposes (in addition to other examples discussed below) would not be considered "other charges." The deletion of the footnote is not intended as a substantive change. The Board intends to incorporate the substance of the footnote in the commentary.

Commenters expressed concern that credit life insurance has been excluded from "other charges." The Board believes that disclosing the cost of voluntary credit life insurance on the initial disclosure statement as an other charge is unnecessary since disclosure is already required by § 226.4(d). In the Board's view, the same conclusion would apply not only to all types of voluntary insurances, such as disability insurance, but it would also apply to required property insurance that is not part of the finance charge under § 226.4(d)(2). Required credit life or disability would, of course, be disclosed as a finance charge on the initial disclosure statement.

Where an open-end credit plan is secured by real property, charges imposed in connection with real property transactions, which are specifically excluded from the finance charge in § 226.4(e) of the current regulation and § 226.4(c) of this proposal, would be other charges under § 226.6(b). Similarly, the charges identified in § 226.4(e) of this proposal regarding fees for perfecting security interests would also be other charges.

Several commenters requested further guidance from the Board in distinguishing between late payment charges, which are considered "other charges," and amounts payable by consumers for collection activity after default (for example, attorney's fees, statutory interest rates, and reinstatement or reissuance fees), which are not considered "other charges." The Board believes that charges that are imposed more frequently on consumers without considering them actually in default, even though they may be technically in default, should be disclosed (for example, the consumer is often given the chance to remedy unintended and inadvertent acts such as late payments and exceeding the credit limit).

Proposed § 226.6(c) corresponds to § 226.5(b)(3) of the May proposal and deals with the security interest disclosure. The language has been redrafted to parallel the statute and to improve readability; no substantive change is intended, however.

In light of the statutory change to section 127(a)(6), this proposal, like the May proposal, eliminates the present requirement to identify the type of security interest; in other words, the creditor need not expand on the term "security interest."

The Board wishes to clarify the applicability of the security interest disclosure to plans that involve the taking of security for advances above a certain amount. Commenters pointed out that a problem exists in identifying on the initial disclosure statement the type of property in which a security interest will be taken because the collateral often is not identified until the consumer decides to get an advance above the unsecured balance limit.

In the Board's opinion, in such instances, creditors must disclose the information that is available to them at the time of providing the initial disclosures. For example, if the creditor initially disclosed the security interest as one in "household goods" but later, when an advance was going to exceed the unsecured balance limit, it was determined that a security interest in only *certain* household goods would be taken, the creditor would be required to disclose to the consumer the collateral that was actually being pledged at that time. Such disclosure would be made by providing the consumer with a change in terms notice required by § 226.9(c) of the proposal. (That section has been modified to facilitate compliance with the security interest disclosure by lifting the timing requirements in the case of a mutually agreed upon change in collateral.)

Of course, when the security interest actually taken is the same as that identified in the initial disclosures, a change in terms notice need not be given. For example, if the initial disclosures provided for a security interest to be taken in household goods and the actual security interest is eventually taken in *all* household goods, there would be no change in terms requiring additional disclosure.

In response to a request from several commenters, the Board wishes to clarify that creditors need describe only the major property securing the credit transaction, and not any incidental or related rights that the creditor may have in the property. For example, a security interest in insurance proceeds or unearned insurance premiums need not be disclosed. (See the security interest definition proposed in § 226.2.)

In the absence of a corresponding statutory provision, the minimum periodic payment requirement in § 226.7(a)(8) of the current regulation and § 226.5(b)(4) of the May proposal has been deleted from this proposal. While the Board is of the opinion that a creditor would routinely provide such information to the consumer, the Board solicits comment on whether such an area is a source of potential abuse requiring regulation.

Proposed § 226.6(d) corresponds to § 226.5(b)(5) of the May proposal and deals with the billing rights statement requirement. It has been reworded to describe more precisely the expected content of the statement. Footnote 22 of the May proposal regarding what constitutes substantially similar has been deleted; the content of that footnote is now contained in the appendix.

The Board solicited comment in the May proposal on a possible creditor identification requirement. The Board believes that to impose such a requirement would be contrary to the simplification effort, especially since the consumer is provided with an address to use for billing inquiries, and no significant need has been evidenced for such a requirement.

Section 226.7—Periodic statements.

Proposed § 226.7 corresponds to § 226.5(c) of the May proposal; it requires that consumers be provided with periodic statements and identifies the information that must be reflected on them. The language "at least quarterly" has been deleted from the introductory paragraph since the requirement for quarterly periodic statements is already addressed by the definition of "billing cycle" in § 226.2 and the timing requirements in § 226.5.

Proposed § 226.7(a) corresponds to § 226.5(c)(1) of the May proposal; it deals with the "previous balance" disclosure requirement. Numerous commenters expressed concern about the language in the May proposal regarding the disclosure requirement when a previous balance is a credit balance. Although the May proposal intended no substantive change from the current regulation, this proposal returns to the current regulatory language. (See existing § 226.7(b)(1)(i).) As has always been the case, the words "credit

balance" need not be used; a symbol or an abbreviation will suffice as long as it is explained on or with the periodic statement.

The last sentence of the paragraph, which also appeared in the May proposal, incorporates a present staff position permitting disclosure of a separate previous balance for each type of transaction.

Proposed § 226.7(b) requires that each credit transaction be identified on the periodic statement; it is unchanged from § 226.5(c)(2) of the May proposal.

Proposed § 226.7(c) corresponds to § 226.5(c)(3) of the May proposal. The majority of comments on this paragraph, which requires that creditors disclose the amount and date of crediting any payment or other credit, were in favor of the deletion of the current regulation's requirement (see existing § 226.7(b)(1)(iii)) that the type of a credit be specifically identified. The paragraph is unchanged in the current proposal. Where a credit for correction of a billing error appears on a periodic statement, however, § 226.13 requires clear identification of that type of credit.

Proposed § 226.7(d) corresponds to § 226.5(c)(4) of the May proposal and deals with disclosure of any periodic rate used to compute finance charges and its corresponding annual percentage rate. Neither this proposal nor the May proposal reflects the parenthetical phrase in the current § 226.7(b)(1)(v) since the paragraph's language can be read to require that the periodic rate(s) used to compute the finance charge must be disclosed whether or not applied during the billing cycle.

A footnote has been added to this paragraph to clarify the disclosure requirements for variable rate programs. (See preceding discussion in § 226.6.)

The present § 226.7(b)(1)(v) and the May proposal permitted the use of the alternative terms "corresponding annual percentage rate," "corresponding nominal annual percentage rate," and "nominal annual percentage rate." While the comments did not indicate a serious need for these alternative terms, the Board does not wish to require form changes by prohibiting their use. Consequently, while they are not listed in this proposal (in light of the fact that the Board does not believe their use is widespread), the Board would not regard their use as inappropriate. This position will be preserved in the commentary.

Language from the May proposal has been retained (with some editorial changes) to indicate that, where different periodic rates are applied to different types of transactions, those periodic rates and their corresponding annual percentage rates must be disclosed, together with the types of transactions to which they apply.

Section 226.7(e) corresponds to § 226.5(c)(5) of the May proposal and requires disclosure of the amount or method of computing the amount of any other type of finance charge (other than periodic rate(s)) that may be imposed. It is unchanged from the May proposal, except for the deletion of footnote 24. (Reference should be made to the preceding discussion on the deletion of footnote 20 of the May proposal. That footnote gave examples of "other types of finance charges.")

Several commenters objected to the requirement that creditors disclose other types of finance charges *whether or not they are imposed during the billing cycle.* The Board would point out that the present regulation (see § 226.7(b)(1)(v)) already recognizes the importance of these types of finance charges in that minimum charges that may be applicable to an open-end account must be disclosed. Since the types of charges covered by this paragraph are becoming more prevalent in open-end credit plans, and because the disclosure of the periodic rate is both an actual and a prospective disclosure, the Board believes that the possibility of the imposition of these types of finance charges should also be disclosed in order to present the finance charge rules without being misleading.

Section 226.7(f) corresponds to § 226.5(c)(6) of the May proposal and deals with disclosing the dollar amount of the balance on which the finance charge is computed, together with an explanation of how that balance was determined. (See § 226.6 for an explanation on deleting the footnote on payment allocation.) Unlike the May proposal, this paragraph only requires disclosure of those balances to which a *periodic rate* was applied. To require the specific and separate identification of each balance involved in computing individual transaction charges or activity charges would significantly complicate the periodic statement. For example, if a consumer obtains a $1500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor would only be required to disclose the balance subject to the monthly rate. In the Board's opinion, adequate consumer protection is achieved under the disclosure requirements of §§ 226.6(a)(4), 226.7(g) and 226.8(b) in such an instance.

If portions of the balance are subject to different periodic rates, however, the Board contemplates that the creditor will separately disclose each balance. For example, if the monthly rate applied to purchases is 1½% for balances up to $500 and 1% for balances over $500, the creditor would be required to disclose two separate finance charge balances for a cycle in which both rates were applied.

With regard to existing Board Interpretation § 226.703 regarding the disclosure of the balance when one or more daily periodic rates are imposed, the Board intends to incorporate the positions in that interpretation in the commentary.

Proposed § 226.7(g) corresponds to § 226.5(c)(7) of the May proposal and requires disclosure of the amount of the finance charge debited or added to the account during the billing cycle; it is essentially unchanged from the May proposal. The language of the first sentence has been changed to read (as does the current § 226.7(b)(1)(iv)) "any" finance charge debited or added to the account during the billing cycle must be disclosed. As in the present regulation, a *total* finance charge disclosure is not required. The last sentence of this paragraph, which incorporates Board Interpretation § 226.701, has been clarified to indicate that, where there is more than one periodic rate, the finance charge attributable to *each rate* need not be separately itemized and identified. Footnote 26 to § 226.5(c)(7) of the May proposal has been deleted as inappropriate regulatory material. That footnote provided that creditors that do not debit or add on finance charges during a billing cycle, but instead reflect the amount being allocated from each payment to finance charges, need not disclose any finance charges that may have accrued between the date of the last payment and the closing date. The Board intends to incorporate this position in the commentary and to expand its applicability to both the previous balance and new balance disclosures.

Section 226.7(h) corresponds to § 226.5(c)(8) of the May proposal; it requires that the annual percentage rate be disclosed (in accordance with proposed § 226.8) whenever a finance charge is imposed during the billing cycle. As does the May proposal, this proposal provides that, where an annual percentage rate cannot be determined because there is no outstanding balance, no annual percentage rate need be disclosed. The current proposal no longer requires, as the May proposal did, that the creditor disclose the fact that no annual percentage rate can be disclosed. The majority of commenters agreed that no annual percentage rate could be determined in these circumstances; they were opposed.

however, to the requirement in the May proposal that the creditor disclose that fact, claiming that such a disclosure would be meaningless and confusing to consumers.

Proposed § 226.7(i) corresponds to § 226.5(c)(9) of the May proposal and implements a present staff position that charges other than finance charges that are imposed be reflected on the periodic statement. Except for minor editorial changes, this paragraph is unchanged from the May proposal.

Section 226.7(j) requires disclosure of the closing date of the billing cycle and of the new balance. It corresponds to § 226.5(c)(10) of the May proposal. In response to commenters' concerns, this proposal returns to the current regulatory language to describe the disclosure requirement when the new balance is a credit balance. (See discussion of proposed § 226.7(a).)

Proposed § 226.7(k) corresponds to § 226.5(c)(11) of the May proposal and deals with the disclosure of any free period permitted. Language has been added to clarify that this disclosure requirement, like that of the present § 226.7(b)(1)(ix), is related to avoiding the imposition of *additional* finance charges rather than finance charges that may have accrued in the ordinary course. Language previously included in the body of the regulation is now reflected as footnote 11.

Section 226.7(l) of the proposal corresponds to § 226.5(c)(12) of the May proposal and requires that an address be provided on the periodic statement for use in submitting billing error inquiries. The "Send inquiries to" language requirement has been deleted as unnecessary in light of the general requirement in § 226.5 that Truth in Lending disclosures be made "clearly and conspicuously."

Section 226.8—Identification of transactions.

This section of the proposal corresponds to § 226.5(d) of the May proposal and § 226.7(k) of the current regulation and deals with the requirement to identify each transaction on the periodic statement. Throughout the section, the term "document evidencing the credit transaction" has been replaced by the phrase "receipt or other credit document." The change is made for editorial reasons, no substantive change is intended.

Footnote 27 of the May proposal, which corresponds to the present proposal's footnote 12, pointed out the liability implications of a creditor's failure to disclose information required by this paragraph. Sections 226.7(k)(4) and (5) of the current regulation and §§ 226.5(d)(4) and (5) of the May proposal also contain specific provisions allowing the creditor to substitute or omit certain information when it is unavailable, so long as the creditor treats inquiries about the transactions as erroneously billed amounts and automatically provides free documentation. Except with regard to foreign transactions, a creditor may only take advantage of these provisions if it maintains procedures reasonably adapted to procure the required information. (When disclosing foreign transactions, a creditor need not even maintain such procedures to be permitted to omit information.) Since the standard in footnote 27 appears to overlap with paragraphs (d)(4) and (5) of the May proposal, the present proposal combines all of the rules for failing to disclose information. Note that under the current proposal, no substitute information is needed when required information is not disclosed. Also, it is contemplated that the creditor need no longer show that information is actually unavailable, only that the creditor has maintained reasonable procedures to procure it.

Section 226.8(a)(1) of the proposal contains identification requirements for purchase transactions; it is substantively unchanged from the May proposal. Editorial changes have been made, however.

The May proposal and the current regulation state that a facsimile draft (for example, a draft in which the required information is typed in, as opposed to a duplicate copy) is not considered an "actual copy of the document evidencing the transaction" for purposes of this section. The reference to a facsimile draft is deleted from the present proposal as being inappropriate regulatory material, but the commentary would preserve this position.

Footnote 28 of the May proposal provided that the creditor complies with the requirement to disclose the amount and date by disclosing this information as supplied by the seller. The present proposal deletes this footnote, as well as footnote 32 of the May proposal, as being unnecessary. Under footnote 12 of the present proposal, the creditor is relieved from civil liability for failure to identify transactions as required if it maintains reasonable procedures to procure the information. The Board believes that utilizing the information supplied by the seller without an independent investigation is part of a reasonable procedure. If the information is wrong, of course, the creditor would correct the account as provided in footnote 12.

The substance of § 226.8(a)(2) is also unchanged from the May proposal except for editorial changes, including placing some material in a footnote. Footnote 29 of the May proposal, which provided guidance on determining whether a creditor and seller are the same or related persons, has been deleted from the present proposal. That footnote provided, for purposes of this section, that franchised or licensed sellers of a creditor's product are related to the creditor; sellers that assign or sell open-end consumer sales accounts to a creditor or arrange for credit under an open-end credit plan that allows the consumer to use the credit only in transactions with that seller are also related to the creditor. The footnote further provided that a person is not related to the creditor simply because an agreement or contract exists under which the person is authorized to honor the creditor's credit card, or because the person and the creditor have a corporate connection if that connection is not obvious from the names used by the person and the creditor. Moreover, the footnote stated that transactions with third party sellers resulting from promotional material or solicitations mailed by the creditor may, at the creditor's option, be described as transactions in which the seller and the creditor are the same or related persons. The Board intends to preserve these positions in the commentary.

Paragraph (a)(2) requires that the creditor make a brief identification of the property or services purchased. Footnote 30 to the May proposal stated that designations such as "merchandise" and "miscellanous" are insufficient, but that identification may be made by reference to the name of a department that conveys the identification of the types of property or services available there, or by a symbol relating to an identification list printed on the statement. The present proposal deletes footnote 30 of the May proposal as being inappropriate regulatory material; however, the same position would be preserved in the commentary to the regulation. The commentary would also incorporate the present staff position which provides that designations such as "second-hand goods" or "promotional items" are insufficient property identifications under this section.

The substantive requirements of § 226.8(a)(3) are also unchanged from the prior proposal. Editorial changes have been made, however. Footnote 32, which provided that the debiting date may be substituted for the transaction

date in a mail order transaction, has been deleted from the present proposal; however, the Board intends to preserve the same position in the commentary.

Footnote 33 of the May proposal also has been deleted from the current draft as inappropriate regulatory material, but would be included in the commentary. That footnote provided that a seller's name is sufficiently disclosed if it appears in the form used in the sales slip, or is a more complete spelling of a name that was alphabetically abbreviated on the sales slip. In addition, the Board believes that a creditor may reasonably abbreviate the seller's name on the periodic statement even if the name appears in a more complete spelling on the sales slip.

Paragraph (a)(3) requires disclosure of the city and state or foreign country where the transaction took place. This merely simplifies the May proposal, which required disclosure of the "address," but then explained that "address" meant the city, and state or foreign country.

The May proposal provides that the creditor may use understandable and generally accepted abbreviations. The present proposal deletes this explanatory material as being inappropriate regulatory material but the Board intends to include this position in the commentary. Footnote 15 of the present proposal, which corresponds to footnote 34 of the May proposal, allows the creditor to omit the address or provide some suitable designation to assist the consumer in identifying the transaction when no meaningful address is readily available in three limited circumstances. The present proposal deletes examples of suitable designations as inappropriate regulatory material, but the commentary would incorporate the following examples: first, when a transaction takes place in a location that is not fixed—for example, aboard a public conveyance such as an airplane—the flight number, or "flight from (point of departure) to (destination)" would be sufficient; second, when a transaction takes place in the consumer's home, "consumer's home" would be sufficient; and third, when a transaction is the result of a telephone or mail order, "telephone order" or "mail order" would be sufficient.

Section 226.8(b) deals with the disclosure requirements for nonsale credit transactions. The examples of nonsale credit, cash advance or overdraft loans, which were in the introductory language to paragraph (b), have been deleted as being inappropriate regulatory material; they will be listed in the commentary. The statement that a facsimile draft is not considered an "actual copy of the document evidencing the transaction" also has been deleted, but the commentary would preserve this position. In addition, the statement that a readily identifiable trade name may be used to characterize a transaction for purposes of paragraph (b)(2) has been deleted. The commentary would also preserve this position.

In order to facilitate compliance with the regulation's requirements, paragraphs (b)(1) and (2) both permit disclosure of the same date information. The Board notes one change in particular, proposed § 226.8(b)(2) permits the use of the debiting date in nonsale credit transactions in the descriptive billing situation. This alternative is already available to creditors that have overdraft checking plans and is also available to a limited extent for other nonsale credit plans. Adopting the debiting date rule eliminates the need for several different rules that contribute to complexity, and it eliminates the need for a special provision whose use is limited in application to a relatively narrow fact situation.

Section 226.5(d)(3) of the May proposal, which relates to transactions billed in precomputed installments, has been deleted. That proposal would have required all creditors to disclose the transaction date and total transaction amount (together with other identifying disclosures) on the first periodic statement on which any portion of the transaction is billed. There would have been no specific requirement for identification of the subsequent installments debited to the account on later periodic statements. Comment was solicited on whether the requirements of this paragraph would facilitate compliance, better inform the consumer, be operationally feasible, and provide consumers with sufficient information on subsequent statements to avoid confusion.

Rather than include a provision in the regulation on transactions billed in precomputed installments, the Board believes that the rule is better located in the commentary. After reviewing the comments which presented various persuasive positions, the Board believes that consumers would be adequately protected if the creditor disclosed on the first periodic statement reflecting the transaction the full amount of the transaction together with the date the transaction *actually* took place; or if the creditor reflected the amount of the first installment and the date of the transaction or the date that it was debited to the account. In either event, subsequent periodic statements should reflect each subsequent installment due, together with any other identifying information required by this section; the debiting date may be used as the date of the transaction.

Sections 226.5(d)(4) and (5) of the May proposal have been deleted, as previously noted.

Section 226.9—Subsequent disclosure requirements.

(a) *Furnishing statement of billing rights.* Section 226.9(a) of the proposal corresponds to § 226.5(e) of the previous proposal. This section implements the amended act, containing the requirement that the long form billing rights statement be sent at least once per calendar year, at intervals of not less than six months and not more than 18 months, to each consumer entitled to receive a periodic statement for that billing cycle. The Board solicited comment on whether *all* consumers should receive the billing rights statement as opposed to only those entitled to receive periodic statements for the particular cycle selected by the creditor. While some commenters believed that all consumers should receive the long form billing rights statements at least once a year, others urged the Board to retain the requirement in the May proposal. In light of the statutory language and to reduce expense, the present proposal requires that the annual billing rights statement be sent only to those consumers entitled to receive a statement for the cycle selected by the creditor.

Section 226.9(a)(2) of the present proposal retains the creditor's option of sending a summary of the consumer's billing rights with each periodic statement. The present proposal deletes the provision in the May proposal permitting the creditor to place the summary statement on a portion of the periodic statement that must be returned to the creditor (for example, the payment stub). The Board notes that the amount of information required in the summary statement has been reduced. Moreover, the present proposal allows the use of multiple-page periodic statements and deletes the specific location requirements set forth in § 226.7(c) of the current regulation. Because of this added flexibility in designing statements, and the shortening of the alternative statement, and given the importance of providing consumers with sufficient information to assert errors under the Fair Credit Billing Act, the Board believes that the alternative

statement should be in a form that the consumer may keep.

(b) *Supplemental credit devices and additional features.* Proposed paragraph (b) deals with disclosures for supplemental credit devices and additional features. It replaces, with respect to disclosures for supplemental credit devices, § 226.5(f) of the May proposal which corresponds to § 226.7(j) of the current regulation. This proposal addresses, in addition to supplemental credit devices, the disclosure requirements for additional credit features that are added to an existing open-end credit account.

The proposal eliminates the distinction, which was included in the May proposal, between solicited and unsolicited credit devices and features, and simply requires that the finance charge disclosures of proposed § 226.6(a) be furnished if the device is provided or the feature is added more than 30 days after initial disclosures. The provision also requires that, where a device is provided or a feature is added *within* 30 days, disclosures must be provided if the device or feature involves finance charge terms different from those previously disclosed. As this provision requires, the disclosures must be made before the consumer uses the device or additional feature for the first time.

In accordance with the current regulation, language has been added to exclude from the disclosure requirements credit devices sent as a renewal or resupply.

The portion of footnote 38 of the May proposal, which lists examples of credit covered by this provision (blank checks, payee-designated checks, blank drafts or orders or authorization forms for issuance of checks) has been deleted as inappropriate regulatory material. The examples will be reflected in the commentary, however. As footnote 38 of the May proposal provided, this provision does not apply to checks used in conjunction with a checking account, even though such checks may also activate a cash advance under an open-end credit plan.

This proposal provides the creditor with flexibility in determining the manner in which the disclosures will be made. Unlike the current regulation, but in accordance with the May proposal, this proposal allows the disclosures to appear with other material. In the Board's view, these disclosures, like any Truth in Lending disclosures, must be made clearly and conspicuously. This proposal no longer includes language requiring that the finance charge disclosures be highlighted. Consequently, where the finance charge disclosures are provided with other Truth in Lending disclosures, the finance charge disclosures need not be referenced as the current regulation requires.

(c) *Change in terms.* Section 226.9(c), which corresponds to § 226.5(i) of the May proposal and § 226.7(f) of the current regulation, outlines the requirements for notifying consumers in the event a creditor makes a change in the terms of the consumer's account. The present proposal reflects a restructuring and clarification of the May proposal, and addresses problems raised by the comments.

Proposed § 226.9(c)(1) states the general rule about the types of term changes that require notice to the consumer and sets forth the timing and format requirements.

The Board solicited comment on whether the 15-day time period should be changed to 21 days to be consistent with the term change requirement in Regulation E. Comment was divided on this point; a great many commenters that are not involved in electronic fund transfers considered it unfair to increase the time requirement. Futhermore, commenters pointed out that the regulation in no way precludes a creditor from providing the notice earlier than 15 days. For these reasons, the present proposal retains the 15-day minimum requirement.

Certain commenters also were concerned at having to give prior notice to all consumers whose accounts may be affected, as proposed to those consumers to whom a periodic statement would be sent for that billing cycle. The requirement contained in the proposal is similar to that in existing § 226.7(f), which requires that prior notice of changes in the most important terms be sent to all consumers. The present proposal also reduces, from the current regulation, the term changes requiring prior notice, so no additional burden should result from the proposal's requirement.

The prior proposal had changed the timing requirement for the notice from 15 days prior to the billing cycle in which the change would be effective to 15 days prior to the effective date of the change. Commenters expressed some confusion about when a particular change goes into effect. In the Board's view, a change that clearly has no retroactive impact, such as the imposition of a transaction fee, would require notice 15 days prior to the date on which the fee will be imposed on transactions. A change in the balance computation method, in contrast, would require notice 15 days prior to the billing cycle in which the change was to be effective.

Commenters questioned whether a new initial disclosure statement could be provided in lieu of a separate change in terms notice as long as the statement was sent within the time limits. When a term is changed, it must be disclosed clearly and conspicuously as the general rule in § 226.5 requires. Consequently, in the Board's opinion an initial disclosure statement reflecting the new term would comply with the change in terms notice requirements, only as long as the change is either highlighted in some way on the initial disclosure statement or the initial disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

Paragraph (c)(1)(ii) lists those circumstances under which the creditor is still responsible for giving the change in terms notice, but is excused from the 15-day timing requirement. The first part of proposed paragraph (c)(1)(iii), which corresponds to the second part of paragraph (i)(4) of the May proposal, relieves the creditor from the timing requirements when a consumer specifically agrees to the change. This might happen, for example, when a consumer goes to the creditor to request a substitution of collateral.

The Board notes that a number of programs allow consumers to skip or reduce one or more payments during the year, or involve temporary reductions in finance charges. For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. The Board contemplates that, if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption), no change in terms notice would be required either prior to the reduction or upon resumption of the higher rates. Otherwise, the creditor would have to give notice prior to resuming the original schedule or rate even though no notice would be required *prior* to the payment or finance charge reduction.

Paragraph (c)(2) of the present proposal describes in one place those situations in which the creditor is completely excused under this regulation from giving a change in terms notice. This paragraph corresponds to the second sentence of (i)(1); paragraph (i)(2); the first part of (i)(4); and paragraph (i)(5) of the May proposal. It deletes as unnecessary the separate provision in the May proposal that notice is not required when there is a change in the collateral requirements.

When the change is due to the consumer's default or delinquency, the creditor is excused entirely from giving a notice of the changed term under paragraph (c)(2)(iv). When there is no default, but the consumer agrees to the change of collateral, the creditor, is excused from the *timing* requirements under paragraph (c)(1)(ii). For example, when a consumer agrees to the creditor's taking a security interest in order to obtain an advance above a certain limit on the account, the creditor need not give *prior* notice under this section.

Paragraph (c)(2)(v) of the present proposal excuses the notice requirement for a change resulting from an agreement involving a court proceeding. This differs from the May draft's requirement that a court *actually approve* the agreement.

Paragraph (i)(3) of the May proposal dealt with the rules that apply when an open-end credit plan is converted to closed-end credit and the rules that apply when closed-end credit is converted to open-end credit. That section has been deleted as inappropriate regulatory material. The Board intends, however, to incorporate in the commentary the positions indicated in the May proposal.

The Board believes that, whenever open-end credit is converted to closed-end credit under the terms of a written agreement signed by the consumer, the creditor shall provide the disclosures required by §§ 226.18 (b), (c), and (d). Whenever closed-end credit is converted to open-end credit under the terms of a written agreement signed by the consumer, the creditor shall provide the disclosures required by § 226.6. When either an individual open-end credit account or an entire open-end credit plan is terminated, but no written agreement converting a consumer's account to a closed-end transaction is involved, the creditor shall continue to provide periodic statements for those consumers entitled to receive them under § 226.5(b)(2) and to follow the error resolution procedures of § 226.13.

Finally, many of the commenters asked the Board to address the applicability of new terms to outstanding balances. Some also suggested preempting state law with regard to timing requirements on term change notices. The Board believes that as a general rule state or contract law should control in this area.

(d) *Finance charge imposed at time of transaction.* No substantive change has been made in this section, which corresponds to § 226.5(c) of the May proposal. In the present proposal the reference to "other than the creditor of the open end account" has been changed to "other that the card issuer" because a person who honors a credit card is also defined as a creditor for purposes of this section.

The Board solicits comment on whether the disclosures required by this paragraph are particularly meaningful, and on whether disclosure of just the amount of the finance charge being imposed at the time of the transaction would afford adequate consumer protection.

Section 226.10—Prompt crediting of payments.

This section corresponds to § 226.5(g) of the May proposal and § 226.7(g) of the current regulation. It has been substantially rewritten in order to reduce complexity by establishing easy-to-apply rules in this area.

Proposed § 227.10(a) and the accompanying footnote state the general rule that the creditor must credit a payment as of the "date of receipt," unless a delay in crediting does not result in the imposition of finance charges. For the purposes of this section, "date of receipt" is the date that payment is made at any location where the creditor conducts business, as long as the payment is received before the creditor's close of business.

Section 226.10(b) corresponds to §§ 226.5(g) (2), (3), and (4) of the May proposal. As in the current regulation, the term "promptly" is used instead of the phrase "as soon as possible." Numerous commenters regarded the "as soon as possible" standard as requiring a creditor to act immediately to credit a payment regardless of its operating procedures or the cost involved.

Proposed paragraph (b) rcognizes that a creditor may very well establish certain requirements as to the way in which payment should be made and that a creditor need not accept a payment that does not conform to specified requirements. The paragraph requires that, if the creditor does accept such a payment, however, the payment must be credited promptly. This rule replaces the current regulation's special "5-day-delay" rules (for payments accepted at locations other than those specified by the creditor for receipt of payments) with a general rule that will apply to acceptance of any nonconforming payment.

Section 226.10(c) corresponds to paragraph (g)(1) of the May proposal; no changes have been made.

Section 226.11—Treatment of credit balances.

Section 226.11, which establishes requirements for the treatment of credit balances, corresponds to § 226.5(h) of the May proposal and contains one timing change. A companion provision on the treatment of credit balances in closed-end credit has been added to Subpart C.

The proposed regulation provides that a creditor's duties arise under this section when the creditor receives a payment or "other credit" that exceeds the new balance by more than $1. "Other credit" is meant to implement the new statutory standard that any type of credit to the consumer's account in excess of the new balance must be refunded, not just excess payments as in the current regulation. The Board intends for "other credit" to encompass the examples given in the statute—rebates of unearned finance charges or insurance premiums, or any other amounts owed to or held for the benefit of the consumer.

In light of the above change, a number of commenters were concerned that five business days would be insufficient to investigate a consumer's claim for a refund of a credit balance, and then refund it. The concern expressed was that a credit balance created by a rebate, a refund, or a return might take longer for the creditor to investigate than an excess payment. To accommodate these concerns, the present proposal extends the time limit in §§ 226.11(a) (1) and (2) from five to seven business days. The separate promptness standard has been deleted from the present proposal, as the Board believes that action by the creditor within seven business days is sufficiently prompt to protect consumers.

Many commenters asked that this section permit them to withhold debits that have been incurred on the account between the time that the credit balance was reflected and the time the consumer requested a refund. In the current regulation the measuring point used to determine the existence and amount of a credit balance is the new balance reflected on the most recent periodic statement provided to the consumer. Even under the current regulation, consumers may request a refund whenever an interim payment creates a credit balance in relation to the new balance without regard to intervening debits. While there may be additional credit balances subject to the proposed regulation due to the statutory amendment, the Board is unaware of operational difficulties necessitating a change.

Other commenters questioned the extent of the requirement in paragraph (b), which corresponds to (h)(2) of the May proposal, that the creditor make a

good faith effort to refund to the consumer any part of the balance remaining in the account for more than six months. This portion of the regulation closely follows the statute. The Board contemplates that a minimum tracing effort will include use of both the consumer's last known address and telephone number. A clarifying revision was made to the introductory language to make clear that a creditor is not required to trace a consumer when the amount of the credit balance remaining for six months is less than $1.

Another commenter asked the Board to address the proper procedure for the creditor to use regarding the disposition of the money if the consumer cannot be traced. This question is not addressed by the act and is, in the Board's view, a matter of state law. The fact that a consumer cannot be traced through the last known address or telephone number (and therefore no refund is mandated by this section) in no way sanctions the creditor's treating the balance as income, or otherwise disposing of it.

Section 226.12—Special credit card provisions.

This section sets forth a number of rules applicable to credit cards and credit card accounts. It corresponds to § 226.6 of the May proposal and § 226.13 of the existing regulation.

(a) *Issuance of credit cards.* This provision sets forth restrictions on the distribution of credit cards. To clarify what classes of transactions are covered, the word "agricultural" has been added to the introductory language. This change emphasizes that agricultural credit, even though it is now exempt from Regulation Z generally, continues to be covered by the rules on credit card issuance.

Paragraph (a)(1) and footnote 40 of the May proposal have been revised so as to change the rule about persons to whom credit cards may be sent. The May proposal would have permitted a card issuer to send a credit card *only* to the person requesting it. This proposal permits cards to be sent to either the cardholder or to an authorized user (upon the cardholder's request), or both, provided the authorized user does not become liable for unauthorized use of the card. This rule more closely resembles present staff position than did the May proposal and responds to commenters' concerns that the rule in the May proposal would have imposed severe operational problems for issuers and caused considerable inconvenience to consumers. The definition of "cardholder" in § 266.2, and the definition of "accepted credit card" in footnote 19, have been revised to reflect these changes. In addition, a definition of "authorized user" has been added as a part of footnote 18.

Note that the rule set forth in the proposal does not address the question of whether an authorized user, who receives a card at the cardholder's request, could be held liable on the account generally. The proposed rule provides only that no liability for *unauthorized use* may be imposed in these circumstances. Also not addressed by the proposal is the question of when one person may act as the agent of another for purposes of requesting a credit card. When a card is sent to a person upon the request of another acting as agent, the recipient becomes a cardholder. State law determines when agency exists.

A new footnote has been added as footnote 17 to paragraph (a)(1). It states existing staff interpretation that an issuer may send a credit card without having received a request for it, provided that (1) the card has some substantive purpose other than obtaining credit, (2) it is not capable of being used as a credit card when issued, and (3) credit capability will be added only upon the recipient's request. For example, a debit card could be issued that, at the time of issuance, could be used only in automated teller machines (ATMs) to make withdrawals or deposits affecting a checking account. Subsequently, upon the consumer's request, the magnetic stripe on the card could be re-encoded (or the ATM could be reprogrammed) so as to permit the consumer to obtain cash advances against a line of credit.

Paragraph (a)(2) provides that it is permissible to issue a credit card in renewal of, or in substitution for, an accepted credit card. The May proposal contained additional material stating existing staff position concening what constitutes a permissible renewal or substitution. Since this material is essentially interpretive rather than regulatory, it has been deleted. No change in substance is intended, however. As stated in the May proposal, a renewal or substitute card is permissible regardless of whether the card is issued by the same card issuer or a successor, and regardless of whether the card has credit or other features the same as or different from the accepted card. However, each accepted card may be replaced by no more than one renewal or substitute card. Further, a card is a permissible renewal or substitute for another card only if it is honored by at least one of the persons who honored the original card.

(b) *Liability of cardholder for unauthorized use.* This portion of the regulation deals with the circumstances in which liability for unauthorized use of a credit card may be imposed on a cardholder. As discussed above, footnote 18 provides that no liability for unauthorized use may be imposed on an authorized user.

Paragraph (b)(1) sets forth the dollar limitation on a consumer's potential liability for unauthorized use of a credit card. The text of this provision, as well as footnote 21, which defines "unauthorized use," are unchanged from the May proposal. A number of commenters discussed the definition of unauthorized use, and asked for guidance on what constitutes "actual, implied or apparent authority" for purposes of the definition. The Board believes that whether actual, implied or apparent authority exists for use of a credit card must be determined by reference to applicable state law. When use is determined under state law to be authorized, the regulation is silent as to the liability of cardholders and authorized users.

Paragraph (b)(2) states the preconditions of imposing liability on the consumer. They remain largely unchanged from the May proposal. However, paragraph (b)(2)(ii), which requires that the issuer disclose the consumer's potential liability, no longer requires the telephone number used for notification of loss or theft to be disclosed. The current regulation does not require the telephone number; it was added in the May proposal. It is dropped from this proposal because the Board wishes to avoid, to the extent possible, requiring form changes. In addition, the telephone number for notification is required to appear on or with the periodic statement by paragraph (b)(2)(iii) of the proposal. Finally, under proposed paragraph (b)(3) (and under the existing regulation), notice need not be given to a particular office or employee of the card issuer to be effective.

A sentence stating that the liability disclosure may include additional information not inconsistent with the liability provisions has been deleted from paragraph (b)(2)(ii). No substantive change is intended, however, since the Board believes that nothing prohibits the inclusion of additional information of this sort.

As in the May proposal, paragraph (b)(2)(iii) reflects a statutory amendment that replaces one of the existing conditions of liability. The new condition, as set forth in the proposal, it that the card issuer disclose, on or with the periodic statement immediately preceding the unauthorized use, the telephone number and address to be

used for notification purposes. The Board solicited comment on whether the proposal correctly reflected the statutory amendment. Many commenters suggested that the requirement also be incorporated into paragraph (b)(2)(ii), modified, or deleted altogether. However, the Board believes that the legislative intent was to require a disclosure separate from that required by paragraph (b)(2)(ii), and that there is adequate statutory authority for the content and timing requirements as set forth in the proposal.

A technical problem was raised concerning paragraph (b)(2)(iii). It was pointed out that if, in the context of a new account, a card were lost or stolen and unauthorized use occurred before the first periodic statement was sent, the issuer would be unable to fulfill this condition of imposing liability. The Board believes that in these circumstances, the issuer would have met its burden if it fulfilled all of the other conditions stated in paragraph (b)(2).

In the May proposal, paragraph (b)(2)(iv) required that, in order to impose liability for unauthorized use, an issuer provide a means of identifying the person to whom the credit card was issued. This differs from the rule in existing Regulation Z, which requires a means of identification of the user of the card. Many commenters urged a return to the rule in the existing regulation, pointing out that the requirement in the May proposal would prohibit identification by the signature of the user, at least when the card had been issued to the cardholder and later given to a user. The reason for the rule in the May proposal was to permit a single identifier to be used by all persons who are accountholders or users on an account. For example, a combined debit/credit card could use as the identifier a PIN (i.e., a secret numerical code). However, the Board recognizes that it may be more practical for traditional credit cards to continue using the signature of an authorized user as identification. Therefore, this proposal would permit the condition to be fulfilled by providing a means of identifying either the cardholder or the authorized user, at the option of the card issuer.

Paragraph (b)(2)(iv) has also been changed by the deletion of the list of examples of means of identification. No substantive change results, since the means listed (signature, photograph, fingerprint, or electronic or mechanical confirmation) are merely examples; they would continue to satisfy this precondition of imposing liability, as would other means of identification.

Comment suggested that the regulation provide that the consumer bears no liability for unauthorized use of a credit card account when the card itself is not presented. For example, merchandise may be purchased by telephone, using a credit card account number only, by a person without authority to do so; it was urged that the cardholder should have no liability in this situation. The Board believes that to impose any liability for unauthorized use in such a situation would run afoul of the statutory intent, because the consumer's account number is widely available and the issuer has not provided a means to identify the cardholder or the authorized user. Comment is solicited, however, on the correctness of this result and on whether specific language should be inserted in the regulation to clarify the point.

Paragraph (b)(3) describes what constitutes notification to the card issuer of loss, theft, or possible unauthorized use of a card. The provision has been changed to indicate that the choice of whether to give notice in person, by telephone, or in writing may be made by whoever gives notification, not only by the cardholder.

Paragraph (b)(4) deals with liability limits imposed by state law or by agreement between the cardholder and the issuer, and is identical to the provision in the May proposal.

Paragraph (b)(5) relates to credit cards issued to businesses, and is unchanged from the May proposal except for an addition clarifying (as do the act and existing Regulation Z) that neither the card issuer nor the business may impose liability for unauthorized use on employees in excess of the Regulation Z limits.

(c) *Right of cardholder to assert claims or defenses against card issuer.* Paragraph (c)(1) sets forth the right of a cardholder to assert against the issuer any claims or defenses relating to goods or services purchased with a credit card, and states certain limitations on that right. This proposal contains various changes from the May proposal in order to improve readability.

Commenters asked for guidance on the issue of where a transaction occurs for purposes of this paragraph (for example, when goods are purchased by mail order from a merchant located in a state other than that of the consumer's designated address). The regulation remains unchanged on this point, however, because the Board believes that such determinations must be made by reference to applicable state law. The same is true with regard to the determination of what constitutes an assertable claim or defense.

Commenters also sought clarification on the relationship between the right established by this section and the right to have billing errors resolved, established by § 226.13.

Generally speaking, § 226.12 applies when a consumer has any claim or defense to payment (except tort claims) for goods or services purchased on a credit card. This would include failure to receive the goods and services, but would not typically include mistakes on the bill. Section 226.12 gives the consumer the right, in many cases, to withhold from the card issuer any portion of the balance that is still outstanding on the transaction giving rise to the claim. No particular procedures for resolution of the underlying problem are stipulated, however.

Section 226.13 sets forth procedures for resolving problems related to the bill or account statement, rather than to the goods or services charged. If a bill reflects goods or services not delivered as agreed, however, § 226.13 applies because the bill is inaccurate; that is, it reflects something that the consumer did not receive. Thus, in the case of goods or services that were not delivered as agreed, the consumer may have both a defense to payment under § 226.12 and a billing error allegation under § 226.13.

Even when both sections might apply, their provisions will operate independently. For example, to trigger the error resolution protections, a consumer must write within 60 days of the transmittal of the first periodic statement reflecting the error. The consumer may pay the full disputed amount pending resolution, however, without losing any substantive rights. In contrast, there is no time limit or specific notice requirement that a consumer needs to follow to be protected by § 226.12. A consumer could thus miss the time limit for activating the error resolution procedures, while retaining the right to assert a claim or defense to payment against the card issuer. On the other hand, once the consumer has paid the full amount of the balance on the transaction at issue, § 226.12 no longer applies. (Of course, losing rights under § 226.12 has no impact on whether the consumer has properly invoked the billing error resolution procedures of § 226.13.)

Paragraph (c)(2), dealing with exceptions to certain limitations on the right to assert claims or defenses, is virtually unchanged from the May proposal, except that a sentence, stating that honoring or indicating that a person honors a particular credit card does not

qualify as any of the exceptions, has been deleted. The Board believes that the sentence added nothing to the paragraph; no substantive change is intended by its deletion.

Paragraph (c)(3), concerning the formula for determining the maximum amount assertable by a consumer, is substantially unchanged from the May proposal.

Paragraph (c)(4) is substantively unchanged from the May proposal. Lanaguage has been added to clarify that use of a check guarantee card is excluded only when no agreement exists between the card issuer and the merchant relating to honoring the card or the checks. The Board contemplates that if an agreement exists, the card issuer would have a degree of control over the relationship with the merchant; therefore, the major rationale for excluding check guarantee cards would not apply.

The Board had solicited comment on whether language should be added to expressly exclude cash advance checks that may be used in connection with a specific credit sale. (Such checks are charged directly to a line of credit, rather than to a deposit account.) After considering the comments, the Board believes that no special rule is necessary. When a cash advance check is used without a card, the section is inapplicable. When a card is used in connection with a cash advance check, the rule regarding check guarantee cards applies; if there is no agreement between the merchant and card issuer, use of the checks is excluded, whereas if there is an agreement, use of the checks is included.

The Board also solicited comment on whether other types of transactions should be exempted from paragraph (c). Many commenters urged that use of debit cards that access an overdraft line of credit be excluded. This proposal does not reflect such an exclusion. The Board has received no evidence that the parties in debit card transactions do not have or could not develop recourse agreements. Moreover, the comments failed to raise operational problems that would justify an exclusion.

Paragraph (c)(5) prohibits the issuer from making an adverse credit report if the issuer knows or has reason to know that the consumer has asserted a claim or defense. Language has been added requiring that, if the issuer learns of a claim or defense after having made an adverse credit report, the issuer notify the credit bureau and, to the extent possible, all other persons to whom the issuer made a report, that the disputed amount is not delinquent. This change would conform this provision to comparable provisions concerning adverse credit reports in the billing error resolution section.

(d) *Offsets by card issuer prohibited.* This provision prohibits card issuers from offsetting credit card indebtedness against the cardholder's funds in a deposit account held with the card issuer.

Paragraph (d)(1) outlines the basic prohibition, and specifies that it applies either before or after termination of credit privileges. However, indebtedness *incurred* after termination of a credit card plan may be offset against deposit funds.

Note that, as stated in existing staff interpretations, this provision applies to transactions not using credit cards, but taking place under plans that do involve credit cards. For example, a consumer may write a check which accesses an overdraft line of credit, but not use an associated check guarantee or debit card. The resulting indebtedness would, nevertheless, be subject to the prohibition of offsets since it is incurred through a credit card plan.

Paragraph (d)(2), as in the May proposal, states that the prohibition on offsets does not invalidate the right of card issuers to obtain or enforce security interests in cardholders' funds held on deposit, or to employ procedures that are available to creditors generally to otherwise attach or seize such funds. The provision has been modified, however, so that it is limited to consensual security interests of a specified amount. This reflects present staff position. Many commenters argued that, without this limitation, creditors could use security interests to circumvent the prohibition on offsets. While other commenters argued that consensual security interests are different from the right of offset in that the consumer must affirmatively agree to grant the security interest, it is not clear that allowing a security interest without some limitation upon the amount would give adequate notice to consumers of the creditor's rights to their funds on deposit. In addition, commenters did not cite any operational problems that would be caused by an amount limitation. This paragraph has also been changed to indicate that the prohibition on offsets does not prevent card issuers from taking funds of cardholders in deposit accounts held with the issuer, when acting under a court order. The existing § 226.13(j) has a similar provision.

The Board believes that paragraph (d)(2) permits card issuers only to take possession of funds using procedures by which other creditors could legally get possession of the same funds. For example, if another creditor, holding a security interest in funds on deposit with the card issuer, could not enforce the security interest without notice to the cardholder, then the card issuer would not be permitted to enforce its security interest in those funds without the same notice. The Board believes that this interpretation may be required by § 169 of the act. However, comment is solicited on this matter. The Board also solicits comment on whether the regulation should contain provisions relating to the conditions under which card issuers would or would not be permitted to place holds on cardholders' deposit accounts.

Paragraph (d)(3) states that the prohibition on offsets does not invalidate plans providing for regular automatic repayment of indebtedness on credit card accounts by means of deducting payments from funds held on deposit with the card issuer. This provision is unchanged from the May proposal. In order for such plans to be permitted, the cardholder and the card issuer must agree in writing on this payment method. Existing staff interpretation also makes clear that automatic deduction of charges for participation in a program of banking services (one aspect of which may be a credit card plan) may take place without violating the prohibition on offsets, even if there is no written agreement.

Paragraph (d)(4) of the May proposal, prohibiting waivers of the prohibition on offsets, has been deleted as unnecessary. Waivers of Regulation Z rights are impermissible as a general rule, in the absence of specific provisions to the contrary.

(e) *Prompt notification of returns and crediting of refunds.* This provision requires action within certain time periods by both the merchant and the card issuer when the merchant accepts the return of property, or forgives a debt for services, purchased with a credit card. It is unchanged from the May proposal except for editorial changes and the deletion of the separate promptness standard. (See discussion in § 226.11.) The comments reflected some uncertainty as to the rule for determining the date a return is accepted; the Board believes that this determination must be made under relevant state law.

(f) *Discounts, tie-in arrangements.* The title of this provision has been changed to provide a better description of its subject matter. Paragraph (f)(1) provides that card issuers may not prohibit merchants from offering discounts for payment in cash instead of by credit card. "A consumer" has been substituted for "all consumers" to make

clear that prohibiting discounts for customers of a particular merchant location, for example, would be as impermissible as prohibiting discounts for all customers of a merchant. Also, the phrase "of the type described in § 226.4(f)" has been deleted. Comment pointed out that this phrase limited the scope of the prohibition to discounts of up to 5%. Current Regulation Z has no such limitation. The Board perceives no reason that merchants should not be able to offer discounts for payment in cash in any amount, provided that, when the discount exceeds 5%, the appropriate disclosures are made under Regulation Z.

Paragraph (f)(2) provides that card issuers may not require merchants, as a condition of participating in credit card plans, to maintain accounts with the issuer or obtain any other service not essential to the operation of the plan. As in the May proposal, this provision permits issuers to require the maintenance of accounts for clearing purposes, but the language in question is modified to emphasize that such accounts may be required *only* if no service charges or minimum balance requirements are imposed. Commenters argued that service charges and minimum balances should be left to regulation by the marketplace. However, the Board believes that, considering the legislative history of this provision, any exception to the general provision should be narrow.

(g) *Prohibition of surcharges.* This provision prohibits the imposition of surcharges for use of a credit card, and corresponds to existing § 226.4(i)(4). The definition of "surcharge" appears in the footnote. A sentence in the May version of the footnote, providing that payment by check, draft, or other negotiable instrument, or by electronic fund transfer, that may result in the debiting of an open-end credit card account shall not be considered payment made by use of that account, has been deleted. However, it will be incorporated into the Board's commentary to the regulation.

(h) *Relation to Electronic Fund Transfer Act and Regulation E.* As did its counterpart in the May proposal, this provision explains the relationship of the Regulation Z rules on issuance of credit cards, liability for unauthorized use of credit cards, and other credit card matters to the corresponding rules concerning access devices (for example, debit cards) in Regulation E. The provision is unchanged from the May proposal except for editorial changes.

Section 226.13—Billing error resolution.

Proposed § 226.13 addresses error resolution procedures and corresponds to § 226.7 of the May proposal and §§ 226.2(j), 226.2(cc), and 226.14 of the current regulation.

This proposal, like the May proposal, reflects a complete restructuring of the regulatory provisions. The major way in which this section has been simplified is evidenced in this restructuring; in the Board's view, this arranging of these regulatory provisions (which are based on the extremely detailed statutory provisions of sections 161 and 162 of the act) will greatly aid in understanding the statutory provisions and will facilitate compliance with them. The restructuring aims to describe the consumer's rights and the creditor's responsibilities in chronological order, with related rights and responsibilities conveniently grouped together.

Changes have been made to increase creditor flexibility in complying with the section. For example, certain location requirements have been deleted; certain time limitations have been expanded; the automatic debit provision has been streamlined; and creditors have been provided with abbreviated investigation and resolution procedures in certain instances.

(a) *Definition of billing error.* Section 226.2(j) of the current regulation defines most billing errors in terms of information appearing on or with a periodic statement. The May proposal modified this requirement to parallel Regulation E, by tying a billing error to activity in the account rather than to its reflection on a periodic statement. Several commenters stated that, prior to the time that the periodic statement is assembled, they might lack documentation adequate to conduct an investigation. As a consequence, those commenters would have to make major operational changes that could work to the detriment of consumers, whose error allegations might be prematurely investigated and dismissed based on the meager information then available to the creditor. This proposal therefore reinstates the current regulatory standard tying a billing error to a periodic statement.

The specific billing error definitions contained in §§ 226.13(a)(1) through (7) correspond to §§ 226.7(a)(1) through (7) of the May proposal.

Paragraph (a)(1) of this proposal corresponds to paragraphs (a)(1) and (2) of the May proposal. Some commenters indicated that paragraph (a)(1) of the May proposal, which defined a billing error as "an extension of credit that was not made to the consumer," was too broad in that it could be read to include credit card use by persons who were in fact authorized. Commenters also felt that paragraph (a)(2) of the May proposal, which defined a billing error as "an extension of credit that results from unauthorized use (as defined in footnote 43 to § 226.6)," might be too narrow because that footnote limited the term "unauthorized use" to credit cards. Paragraph (a)(1) of this proposal accommodates these concerns by limiting the error to *unauthorized* extensions of credit not made to the consumer, and by including the unauthorized use of open-end credit plans.

Paragraph (a)(2) of this proposal, which corresponds to paragraph (a)(3) of the May proposal, is substantively unchanged. It provides that extensions of credit not identified on a periodic statement in accordance with the identification of transaction requirements of § 226.8 are billing errors. Although creditors may use certain alternative transaction identifications on their periodic statements under § 226.8, they must afford consumer inquiries regarding the permissible alternative identifications the protections of § 226.13(e)(1).

Paragraph (a)(3) of this proposal, which corresponds to paragraph (a)(4) of the May proposal, is substantively unchanged. In part, it defines a billing error as property or services "not accepted" by the consumer. The Board believes that the issue of when goods are deemed "accepted" is governed by state law.

Furthermore, paragraph (a)(3) defines a billing error as an extension of credit for property or services not delivered to the consumer or the consumer's designee as agreed. The current regulation and the May proposal clarified with a footnote the scope of non-delivery. Although the footnote has been deleted in order to simplify the regulatory text, this provision continues to include delivery of property or services different from that agreed upon, or delivery of the wrong quantity, late delivery, or delivery to the wrong location; but, it does not include any dispute relating to the quality of property or services. The Board intends to incorporate the position of the footnote in the commentary.

Paragraph (a)(4) of this proposal, which corresponds to paragraph (a)(5) of the May proposal, is substantively unchanged.

Paragraph (a)(5) of this proposal, which corresponds to paragraph (a)(6) of the May proposal, contains one modification. The May proposal provided that a billing error included computational and other accounting errors "relating to a credit extension." This limiting phrase has been deleted to clarify that computational errors

involving other entries on the consumer's account, such as payments and late payment charges, may also be billing errors.

Paragraph (a)(6) of the present proposal deals with documentation requests; it corresponds to § 226.7(a)(7) of the May proposal and § 226.2(j)(1) of the current regulation. Paragraph (a)(7) of the May proposal had been drafted in conformity with the provisions in Regulation E; the language of proposed paragraph (a)(6) now tracks that of § 161(b)(2) of the act. In light of the differences between the two statutes in the provisions regarding this type of billing error and in the statutory requirements for resolution, the Board believes that requests merely for copies of receipts, sales slips or other documents evidencing credit extensions would not trigger the error resolution procedures. Any request for "additional clarification" of a credit extension (and such a request for clarification may very well include a request for a copy of a receipt or sales slip) would, however, trigger the error resolution procedures if made within the appropriate time limits. This position, in the Board's view, represents the proper interpretation of § 161(b)(2) of the act and affirms the present staff position on the issue. In addition, to include in the regulation a detailed and complex rule designed specifically for documentation requests that in no way hint or imply that a problem is reflected on a periodic statement would run afoul of the simplification effort.

Proposed paragraph (a)(7) implements § 161(b)(6) of the amended act. This paragraph provides that the creditor's failure to transmit a periodic statement to the consumer's current address is a billing error, unless the consumer mailed notice of an address change less than 20 days before the end of the billing cycle requiring the periodic statement. This specific billing error was subsumed in the general documentation request provision of § 226.7(a)(7) of the May proposal. In order to ease operational problems in this area, the regulation provides that the creditor must be notified in writing of a change in address.

(b) *Billing error notice.* Many of the changes that have been made in paragraph (b) of this proposal, which corresponds to § 226.7(b) of the May proposal and § 226.2(cc) of the current regulation, are editorial. For instance, the phrase "billing error notice" is used instead of "notice of billing error" and other variations that appeared throughout the May proposal.

Proposed footnote 25 corresponds to § 226.7(i) of the May proposal. It relieves the creditor from continuing error resolution responsibilities if the consumer subsequently concludes that no error occurred. While editorial changes have been made in the footnote, no substantive change is intended. The Board contemplates that a consumer's withdrawal of a billing error notice may be either oral or written.

The timing requirements for a consumer to submit a billing error notice have been substantively modified. Paragraph (b)(1)(ii) of the May proposal, which permitted a consumer to use another 60-day period to assert a billing error ascertained from a documentation request, has been deleted. Paragraph (b)(1) of the present proposal simply stats, in part, that a billing error notice must be received by a creditor no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error. In the Board's opinion, to include a detailed rule in the regulation that will apply in only a few situations is contrary to the simplification effort. If, however, the consumer requests a periodic statement because the creditor failed to transmit a periodic statement (which would be a billing error under proposed paragraph (a)(7)), then the consumer, upon receipt of the periodic statement, would have another 60 days to assert a billing error discerned from that statement. The 60-day time period would, in the Board's opinion, begin from the appearance of the error on the first periodic statement that the consumer receives.

Comment on paragraph (b) of the May proposal suggested that creditors, who supply consumers with a telephone number in addition to a specific address for billing error inquiries, should be *required* to warn consumers that they must write if they wish to preserve their rights under the Fair Credit Billing Act. This suggested disclosure has not been incorporated in the regulatory text, in light of the fact that proposed § 226.5 requires that Truth in Lending disclosures be made clearly and conspicuously. However, language to that effect is contained in the model billing rights statement located in Appendix F.

(c) *Time for resolution; general procedures.* Paragraph (c) of this proposal, which corresponds to the same paragraph of the May proposal and §§ 226.14(a) (1) and (2) of the current regulation, is substantively unchanged.

Under paragraph (c)(2) of this proposal, the creditor must comply with specified error resolution precedures not later than the end of the second complete billing cycle, but in no event later than 90 days. Creditors that temporarily correct an alleged billing error during investigation must *finally* resolve within the time limits for error resolution; temporary correction does *not* satisfy the error resolution requirements.

Proposed paragraph (c)(3) relieves the creditor from conducting an investigation and determining whether a billing error occurred in certain instances. Since some creditors prefer to correct a billing error as alleged by a consumer rather than conduct an investigation, whether or not any mistake has in fact been made, this proposal clearly permits this practice. In the Board's opinion, if a creditor follows this procedure, no presumption is created that a billing error occurred.

(d) *Rules pending resolution.* Paragraph (d) of this proposal corresponds to paragraph (d) of the May proposal and portions of §§ 226.14 (a) through (e) of the current regulation.

Paragraph (d)(1) deals with a consumer's right to withhold disputed amounts and corresponds to paragraph (d)(1) of the May proposal. It provides that a consumer may withhold that portion of any required payment that is related to the disputed amount. If finance or other charges have accrued on the disputed amount, these charges are "related" and may be withheld. Similarly, the undisputed portion that the consumer remains obligated to pay may include finance or other charges that would accrue notwithstanding the alleged billing error. In attempting to reduce detail in the regulatory text, the May proposal's footnote 49, which defined the phrase "disputed amount," has been deleted. The Board continues to construe this phrase, however, to mean the amount of the transaction or charge that is subject to an alleged billing error, even though the allegation concerns the description of the transaction (such as the date or the seller's name) rather than a dollar amount.

Language in paragraph (d)(1) clarifies that the consumer's withholding of the disputed amount from the total bill cannot subject the undisputed portion to the imposition of additional finance or other charges. For example, on an account with a 30-day free-ride period, a consumer who disputed a $2 item out of a total bill of $300 and paid $298 within the free-ride period would not lose the free-ride as to the undisputed portion, even if the creditor determined later that no billing error occurred. The Board believes that this clarification is especially important in light of the increased use of balance computation methods that include a consumer's

current debits when the account is not paid in full at the end of each cycle. The Board solicits comment on any operational difficulties that may arise from this interpretation.

Proposed paragraph (d)(2) (Creditor's handling of disputed amount) corresponds to paragraph (d)(2) of the May proposal and is substantively unchanged. The creditor may mail a periodic statement reflecting a disputed amount provided that the creditor indicates on or with the periodic statement that payment of the disputed amount is not required pending resolution. In order to provide creditors with increased flexibility in designing disclosure forms, the proposal deletes the current regulatory requirement that the disclosure appear "on the face" of the periodic statement. The creditor is, however, subject to the general "clear and conspicuous" requirement of proposed § 226.5 in making this disclosure. The Board, however, affirms the present staff position that the creditor does not have to specify the actual dollar amount that the consumer need not pay pending resolution.

Proposed paragraph (d)(3) (Collection action prohibited) corresponds to paragraph (d)(3) of the May proposal and has been restructured. In this paragraph, as elsewhere in this proposal, the word "promptly" replaces the phrase "as soon as possible."

Proposed paragraph (d)(3) also contains two substantive changes. It relieves operational burdens by expanding the two-business day grace period to three business days for inadvertent collection actions. This expansion, together with the revised "business day" definition in § 226.2, should ease operational difficulties and reduce inadvertent violations in this area. The remedial action provision, which in the May proposal required a creditor to take *any* action necessary to correct an inadvertent collection action, has also been modified. In this proposal, a creditor must take any "reasonable" action to correct. The Board contemplates that "reasonable" corrective action includes, for example, refunding disputed amounts and related finance charges that were inadvertently collected; removing a lien against a consumer's property; and withdrawing any court action taken.

Proposed paragraph (d)(4) (Adverse credit reports prohibited), which corresponds to the same paragraph of the May proposal, has been restructured. It was incorrectly reflected in the May proposal that a creditor was prohibited from reporting that a disputed amount or an account was in dispute. The current regulatory language has been reinserted to limit the prohibition to reports that an amount or an account is *delinquent.* As the current regulation and the May proposal provide, the Board believes that this restriction does not prohibit a creditor from reporting that the amount or account is in dispute, or from reporting that the consumer's account is delinquent if undisputed amounts remain unpaid. While this specific language is no longer included in the regulation itself, the Board intends to incorporate this position in the commentary.

The present proposal substitutes the word "persons" for the word "creditors" in the requirement that the creditor notify the recipients of inadvertent adverse reports that the amount is not delinquent. This change is consistent with the general rule in both proposals that prohibits the creditor from making an adverse report to "any person" pending compliance with error resolution procedures. Moreover, when credit reports are made before the creditor receives a billing error notice, the creditor must notify not only credit bureaus, but also all other persons to whom the creditor reported, to the extent possible. Whereas a credit bureau is any person in the business of collecting and disseminating information relating to the creditworthiness of consumers, "persons" include employers and insurance companies, as well as other creditors.

Paragraph (d)(4) of this proposal contains several other substantive changes. In order to ease operational difficulties, the grace period for inadvertent credit reports has been expanded from two to three business days. A discrepancy in the remedial provisions has been corrected from the May proposal. Under the prior proposal, a creditor that received a billing error notice after making an adverse report was required to notify the recipients in writing, whereas a creditor that inadvertently made an adverse report within two days after receiving a billing error notice was required simply to notify the recipients; the manner of notification was not specified. The Board contemplates that the creditor must take commercially reasonable steps to ensure that the adverse credit reports are corrected. In some instances, notification may be accomplished by a letter to a person responsible for receiving the corrective information; in other cases, the same result may also be accomplished by computer communication or telephone.

Several commenters to the May proposal objected to the "as soon as possible" standard to effectuate corrective action. This proposal substitutes the word "promptly" for "as soon as possible" to clarify that a creditor that reports, for example, to a credit bureau on scheduled monthly updates need not transmit corrective information immediately by a costly unscheduled computer or magnetic tape. The creditor merely has to contact the credit bureau promptly by letter or otherwise with the correct information. The creditor is in no way responsible for ensuring that the credit bureau corrects its information immediately.

Paragraph (d)(5) (Automatic debit of disputed amounts) completely revises the requirements in § 226.7(d)(5) of the May proposal and § 226.14(c) of the current regulation. This provision governs automatic payment plans in which a cardholder authorizes a card issuer to deduct periodically an agreed-upon amount from the cardholder's account in order to pay the cardholder's indebtedness. Under the current regulation and the May proposal, the card issuer must prevent or restore an automatic debit of a disputed amount, if it receives a billing error notice within 16 days after transmitting the first periodic statement that reflects the billing error.

A few commenters to the May proposal suggested that the timing requirements in this provision are not rationally related to operational considerations involved in preventing an automatic debit. For instance, if a billing error notice arrives two hours before a scheduled automatic debit, it may be difficult for a card issuer to prevent an automatic debit from occurring.

Proposed paragraph (d)(5) requires the card issuer to prevent an automatic debit of a disputed amount and related finance or other charges, only if it receives a billing error notice up to three business days before the automatic debit date. Under the proposal, the card issuer would not have to restore a debited amount if the billing error notice arrives after the three-business-day cut-off. If, however, any part of the disputed amount is still outstanding and unresolved at the time of the next automatic debit, the card issuer would have to prevent that automatic debit.

Paragraph (d)(6) of the May proposal, which dealt with acceleration of a consumer's debt or the closing of the consumer's account, has been deleted. This provision now appears as footnote 24 at the beginning of the section.

(e) *Procedures after creditor determines that a billing error occurred as asserted.* Paragraph (e) of this proposal corresponds to paragraph (e) of the May proposal and to portions of

§§ 226.14(a)(2)(i) and (b)(2) in the current regulation. Although a number of editorial changes have been made, this provision is substantively unchanged.

As in the May proposal, a creditor that determines that a billing error occurred as alleged by a consumer must correct the error and credit the consumer's account with any disputed amount and related finance or other charges. Paragraph (e)(1) of this proposal clarifies this requirement by adding the phrase "as applicable" to denote that the corrections vary with the type of billing error that occurred. For example, a misidentified transaction that results in a billing error is cured by properly identifying the transaction and crediting finance charges. The creditor does not have to cancel the amount of the underlying obligation incurred by the consumer.

Paragraph (e)(2) of this proposal clarifies ways in which a creditor could notify the consumer of billing error corrections. The notice may be sent separately, or on or with a periodic statement that is sent within the resolution time period. If the notice of the correction appears on a periodic statement, it must specifically identify the amount as a correction rather than merely identify the amount as a credit to the account. If a *separate* billing error correction notice is provided, however, the periodic statement reflecting the corrected amount may simply identify it as "credit."

(f) *Procedures after creditor determines different billing error or no billing error occurred.* Paragraph (f) corresponds to paragraph (f) in the prior proposal and to portions of §§ 226.14(a)(2) (ii) and (iii) in the current regulation. Although a number of editorial changes have been made, this provision is substantively unchanged. Footnote 27 corresponds to the material contained in § 226.7(g) of the May proposal and portions of § 226.14(a)(2)(iii) of the current regulation.

This proposal clarifies that the creditor's explanation that the consumer's allegation is either partly or wholly incorrect may be sent separately or with a periodic statement, at the creditor's option. For the reasons discussed in paragraph (e) above, the words "as applicable" have also been added to proposed paragraph (f)(3).

(g) *Creditor's rights and duties after resolution.* This paragraph corresponds to paragraph (h) of the May proposal and portions of §§ 226.14(b)(3), (e)(1), and (e)(2) in the current regulation.

Proposed paragraph (g)(1) combines the first sentence of the same paragraph in the May proposal with the third sentence of § 226.14(b)(1) of the current regulation. The latter clarifies that the creditor may require payment of any minimum periodic payments that the consumer withheld during the error resolution period because of the billing error allegation.

Paragraph (g)(2) in this proposal, which corresponds to the last sentence in paragraph (h)(1) of the May proposal, clarifies the manner of determining the number of days a consumer has for payment after resolution. The provision requires the creditor to allow a consumer any customary free-ride period or 10 days, whichever is longer, to pay a disputed amount and related finance or other charges without incurring additional finance or other charges.

The May proposal provided that the time period would begin "after delivering the notification for the consumer to pay." The present proposal deletes this phrase, as the Board contemplates that the creditor will use the same triggering event that is normally used. For example, if the creditor uses the next periodic statement to reflect the amount due, then the date the statement is mailed, or the closing date of the previous billing cycle, would probably be the triggering event.

Proposed paragraph (g)(3) corresponds to paragraph (h)(2) of the May proposal and is substantively unchanged.

Paragraph (g)(4) of this proposal corresponds to paragraph (h)(3) of the May proposal. This provision imposes certain duties on a creditor if it receives further notice from a consumer that the consumer still disputes the amount. The present proposal returns to the current requirement in § 226.14(e)(2) that the consumer's notice be in writing.

Proposed paragraphs (g)(4) (i) and (iii) also differ from the May proposal, which had required the creditor to notify in writing recipients of adverse credit reports. The present proposal requires the creditor simply to notify these parties. These changes comport with the revisions discussed in connection with paragraph (d)(4), which prohibits adverse credit reports during the error resolution period.

(h) *Reassertions of billing error.* This paragraph corresponds to paragraph (j) of the May proposal. The present proposal returns to the current regulatory standard, which relieves the creditor of further resolution duties if the consumer reasserts "substantially the same billing error," rather than the "same error" standard that appeared in the May proposal. The present proposal also clarifies the relationship between this paragraph and paragraph (g) of this section, which imposes certain post-resolution duties on the creditor.

(i) *Forfeiture penalty.* Paragraph (i) of the present proposal, which penalizes the creditor for failure to follow the error resolution procedures set forth in this section, corresponds to paragraph (k) of the May proposal and § 226.14(f) in the current regulation. Although it is substantively unchanged, it has been edited and restructured to facilitate its use. The Board contemplates that a creditor that has forfeited the right to collect a certain amount will take no steps to collect it, not even billing the consumer for the amount. Furthermore, as in the May proposal, the present proposal requires the creditor to credit or refund any forfeited amount that the consumer has already paid, rather than withheld pending resolution.

(j) *Relation to Electronic Fund Transfer Act and regulations.* This paragraph corresponds to § 226.7(m) in the May proposal, and clarifies creditor responsibilities when an extension of credit is incident to an electronic fund transfer. References to paragraphs (e), (f), (h), and (i) of this section have been inserted to parallel a similiar provision in Regulation E. In addition to Regulation E requirements, a creditor must still comply with Regulation Z paragraphs that are not cited, which include paragraph (d) (Rules pending resolution), paragraph (g) (Creditor's rights and duties after resolution), and paragraph (i) (Forfeiture penalty).

This paragraph is designed to relieve a financial institution from complying with the conflicting requirements in Regulation Z and Regulation E. In certain instances, the Regulation E error resolution procedures are not applicable operationally to credit extensions. For example, a creditor does not have to provisionally recredit a consumer's account, under Regulation E § 205.11(c)(2)(i), in an amount equal to the unpaid extension of credit. The Board contemplates that a creditor will consider the characteristics of the credit extension portion of the electronic fund transfer, and apply the Regulation Z requirements appropriately. For example, although the Regulation E corrections provision in § 205.11(e) is not specific, a financial institution must credit the consumer's account with any finance charges incurred as a result of the alleged error.

Section 226.14—Determination of annual percentage rate.

Sections 226.14 (a) and (b) correspond to §§ 226.8 (a) and (b) of the May proposal. They have not been changed.

Section 226.8(c)(2)(ii) of the May proposal has been deleted from the

current proposal. Comments in no way indicated use of the computation method of imposing a finance charge based on specified ranges or brackets of balances. As in the May proposal, comment is again solicited as to whether any creditors use this method of imposing finance charges.

Section 226.8(c) of the May proposal, now § 226.14(c), has been renumbered for clarity.

The material in § 226.8(c) (1) and (2) of the May proposal is now in § 226.14(c)(1); the material in § 226.8(c)(2)(iii) of the May proposal is now in § 226.14(c)(2). Under proposed § 226.14(c)(2)(i), the annual percentage rate is determined by dividing the total finance charge by the amount of the balance to which it is applicable. As did the May proposal, this proposal recognizes the fact that an annual percentage rate cannot be determined where a finance charge is imposed during a billing cycle in which there is no outstanding balance. (See footnote 29 and § 226.7(h) of this proposal, which provide that creditors are not required to disclose an annual percentage rate or to state that one cannot be determined.)

In the May proposal, the Board, using an initial loan fee as an example, solicited comment on situations in which a finance charge is imposed but bears no relationship to the balance on the account. The Board believes that since initial loan or application fees are collected at application, they will be reflected on the initial disclosure statement, rather than on the periodic statement; the fee, therefore, will not enter into the annual percentage rate calculation on the periodic statement.

In situations where activity, transaction, or other minimum or fixed charges are imposed, however, such charges are more likely to be nominal in amount; therefore, significant distortions in the annual percentage rate will not result.

The Board received several comments requesting that the minimum charge referred to in present regulatory § 226.5(a)(2)(iii) [§ 226.8(c)(2)(iii)(C) in the May proposal) be increased to $1. Because of the statutory language in § 127(b)(6) of the act, the limitation stated in § 226.14(c)(2)(iii) of this proposal remains at $.50.

Proposed paragraph (d) is unchanged from the May proposal.

Proposed paragraph (e) is new; it affords creditors special protection for errors that result from the good faith use of faulty calculation tools. While the Board believes that this regulatory provision will no longer be appropriate or necessary in light of the expanded defense for such errors in § 130 of the act, several commenters expressed concern about the applicability of this defense before April 1, 1982, the effective date of the new act. They requested that some form of present § 226.5(c) remain in the regulation until that time.

Section 226.15—Right of rescission.

This section, which corresponds to § 226.9 of the May proposal, has been substantially revised.

(a) *Consumer's right to rescind.* Proposed § 226.15(a)(1) sets forth the general rule allowing the consumer to rescind at certain points during the existence of an open-credit plan that is or may be secured by the consumer's principal dwelling. The present proposal returns to the statutory language that explicitly covers security interests that "will be" retained or acquired. The Board believes that this phrase may be necessary to clarify that security interests not retained when a transaction takes place may still give rise to the right of rescission. For example, materialmen's or mechanics' liens arising by operation of law may not arise until performance has begun. The right of rescission may still be applicable in such situations, even where the security interest has not yet been created.

Footnote 31 is new and represents the material in § 226.7(f)(2) of the prior proposal. The footnote provides that the right to rescind does not apply to open-end credit plans in which a state or federal agency is the creditor. The present proposal deletes paragraphs (f)(1) and (f)(3) of the prior proposal, as being inapplicable to open-end credit plans. Paragraph (f)(1) of the prior proposal exempted residential mortgage transactions. In light of the definition of open-end credit, under which a creditor must reasonably contemplate repeated transactions, and the legislative history regarding that definition, the Board believes that residential mortgage transactions would not be made on bona fide open-end credit plans. Accordingly, paragraph (f)(3) of the prior proposal, regarding the subordination of security interests that were originally exempt, has also been eliminated.

The right to rescind is available under this section to any "consumer whose ownership interest in his or her principal dwelling is subject to the security interest." "Consumer" is defined, in relevant part, as a natural person including a comaker, endorser, guarantor, surety or similar person who may be obligated to repay the extension of credit. In the Board's judgment, this definition encompasses persons who are not parties to the credit agreement but who have signed the security agreement. Therefore, a joint owner in this situation must be given the right of rescission if the property involved is that consumer's principal dwelling.

Clarifying language has also been added to the introductory sentence to indicate that it is the creditor's option whether the consumer may rescind (1) each transaction made under the plan or (2) only the plan when the plan is opened, the security interest when added or increased, or an increase in the credit limit. Footnote 32 indicates that this second option expires on March 31, 1985, and that upon expiration a consumer would have the right to rescind each individual advance under an open-end credit plan secured by the consumer's principal dwelling. In response to comments, the present proposal has been revised to indicate clearly that the rescission right only affects advances made after the expiration date, not prior obligations.

Section 226.15(a)(2) of the present proposal contains only editorial changes from the previous proposal.

Section 226.15(a)(3) of the present proposal has been rewritten to clarify that the rescission period runs from the latest of three events—the transaction or other occurrence giving rise to the right of rescission, delivery of the required notices, and delivery of the material disclosures. The rescission notice and the material disclosures need not be delivered at the same time.

All of the listed material disclosures must be given whenever an event takes place giving rise to the right of rescission. The disclosures must contain sufficient information so as to meet the content requirements for those disclosures set forth in § 226.6. The Board contemplates that a copy of the initial disclosure statement would suffice for this requirement.

Footnote 28, which lists the material disclosures for purposes of this section, has been modified to include membership fees or other fees for participation in an open-end credit plan. Reference to the minimum periodic payment disclosure has been deleted in accordance with its deletion as an initial disclosure. Other non-finance charges such as documentation fees and late payment fees are not included as material disclosures.

The second and third sentences in paragraph (a)(3), which correspond to paragraph (a)(4) of the prior proposal, describe the rule on the expiration of the right of rescission when the required notices or disclosures are not delivered. The May proposal provided that the right expires three years from the earlier of the triggering event or upon the "date

of the transfer of the property." With regard to the latter, a number of commenters asked the Board to return to the current regulatory language to assure that the right of rescission would not expire merely because some portion of the consumer's legal or equitable interest was transferred. The present proposal reflects this change. The Board reaffirms the present staff position that both voluntary and involuntary transfers, including foreclosure sales, terminate the right to rescind.

The rule in the current § 226.9(f)(1) has been added as paragraph (a)(4) to clarify that transactions in which more than one consumer's ownership interest is at risk may be rescinded by any one of the consumers involved.

(b) *Notice of right to rescind.* The present proposal returns to the current regulatory requirement that the creditor give two copies of the rescission notice. Some commenters requested this change, so that the consumer would be able to use one copy to notify the creditor and retain the other for information. The proposal also clarifies that two copies of the notice must be given to each consumer entitled to rescind. Also, a new disclosure requirement, the expiration date of the rescission period, has been added as paragraph (b)(5).

The present proposal also differs from the May proposal in allowing the notice either to be separate from the material disclosures or combined with them, even where the creditor uses an initial disclosure statement to furnish the material disclosures. This position is based in part on the fact that the proposed format requirements for open-end credit disclosures are flexible enough for a creditor to combine disclosures in a manner that is conspicuous to the consumer.

Appendix F includes model rescission notices.

(c) *Delay of creditor's performance.* The first sentence is substantively unchanged from the May proposal. A number of commenters were concerned that a card issuing creditor might unwittingly violate this section if a third party honoring the card had no knowledge of the need for delay and provided materials or services to the consumer within the rescission period. This might occur, for example, when the consumer makes a purchase below the merchant's floor limit, so that the card issuer is not contacted for authorization. The present proposal relieves the creditor of liability in this situation, so long as the creditor takes no security interest in the dwelling as a result of any debts incurred by the consumer during this period.

(d) *Effects of rescission.* The present proposal is divided into two paragraphs to address the differing effects of rescission when an individual transaction is rescinded, in contrast to when the plan, the added security interest, or the credit limit increase is rescinded. The effect of rescinding an individual transaction on an open-end credit plan, as set forth in paragraph (d)(1), is comparable to the rescission of a closed-end credit transaction: that is, the security interest is void and the creditor and consumer exhange property or money so that the parties are basically returned to the positions occupied prior to the transaction. When a consumer rescinds a transaction under this paragraph, the creditor must return all amounts of money related to the credit extension including any downpayment, payments made, and appraisal or credit report fees. These examples are not listed in the present proposal; the Board intends to incorporate them in the commentary.

Paragraph (d)(1) sets up the mechanism for the exchange of property. The present proposal substitutes the term "tender" for "offer," thus returning to the statutory language, because the words may not be synonymous under state law.

This paragraph has also been revised to clarify that the consumer's option to tender at the location of the property or at the consumer's residence applies only to the tender of goods and materials. A tender of money must be made at the creditor's place of business (for example, by mailing a check to the creditor).

The paragraph uses the term "calendar days" in describing the time periods within which the creditor must return any money or property and reflect the termination of the security interest, and subsequently take back any money or property tendered by the consumer. This reflects staff interpretation of this provision.

Commenters requested that the Board allow creditors to utilize offsets, escrow agreements, and other similar alternative methods of complying with their responsibilities under this section. However, the Board believes that, in view of the act's specificity regarding the creditor's obligations, these alternatives would be inappropriate.

Many commenters also addressed the rule that requires the creditor to return any money or property given by the consumer even if it were given to third parties. In the Board's judgment, because section 125(b) of the act requires that creditors return any money or property given as earnest money, downpayment, *or otherwise,* creditors must return all monies including downpayments, prepayments, application fees, and paid to third parties. This rule reflects existing staff interpretation.

The Board would point out that these property exchange provisions do not seem relevant to those situations not involving transactions—that is, when the consumer rescinds a plan when it is opened, a security interest when added or increased to secure an existing plan, or an increase in the credit limit. When the consumer rescinds under one of these provisions, paragraph (d)(2) specifies the effects of the rescission. As with the rescission of a transaction, any amounts related to the event rescinded must be returned to the consumer. For example, if a consumer rescinds the plan when it is opened, the creditor would be obliged to return any membership or application fee paid; a consumer who rescinds an increase in the credit limit would be refunded any fee imposed for a new credit report. These examples were included in the regulation in the May proposal but have been deleted as being inappropriate regulatory material; the Board intends, however, to incorporate them into the commentary. A sentence has been added to the paragraph to emphasize the fact that a consumer's obligation to pay for an individual advance or purchase is not affected by the fact that the consumer rescinds under this paragraph, in contrast with the effect of rescinding an individual transaction. The issue would only arise in three-party situations; in two-party credit situations, the creditor must delay performance until the rescission period has expired. Of course, even as to three-party transaction, no additional security interest would attach.

(e) *Consumer's waiver of right to rescind.* This paragraph differs significantly from that of the May draft and the provisions of the existing regulation with regard to the nature of the emergency giving rise to a waiver. The consumer need only determine that the extension of credit is needed to meet a bona fide personal financial emergency. This standard essentially mirrors that in section 125(d) of the act. The Board believes that the current regulatory implementation of that statutory provision may be unnecessarily narrow and solicits comment on this revision. While the requirements for a waiver would be eased, this provision continues to prohibit the use of preprinted forms for this purpose, in order to prevent any abuse of the waiver rule.

Section 226.16—Advertising.

This section corresponds to provisions in § 226.10 of the present regulation and § 226.10 of the May proposal regarding the advertisement of open-end credit. Rules regarding advertisements for closed-end credit are found in § 226.24.

In accordance with present staff position and in light of the statutory language, the Board would point out that the advertising provisions, unlike the rest of Regulation Z, applies to creditors and non-creditors alike.

(a) *Actually available terms.* Section 226.14(a) corresponds to § 226.10(a)(1) of the May proposal and provides that an advertisement for open-end credit shall state only those terms that the creditor is actually prepared to offer. Commenters suggested retaining the "will arrange" language of the current § 226.10(a)(1)(i) in order to permit creditors to advertise terms for upcoming loan programs or specific credit offerings, as long as the terms will be generally available to consumers.

The general prohibition against inaccurate or misleading advertising in paragraph (a)(2) of the May proposal has been deleted from this proposal as unnecessary. It is believed that state statutes provide adequate protection for consumers. Commenters expressed serious concern that introducing such a broad and, arguably, imprecise standard would result in extensive, costly litigation.

(b) *Advertisement of terms that require additional disclosures.* Proposed § 226.14(b) corresponds to § 226.10(b) of the May proposal. It sets forth the so-called "trigger" terms which, when included in an advertisement for consumer credit, give rise to the requirement that certain additional disclosures also be included in the advertisement. While this paragraph is almost identical substantively to the May proposal, in response to commenters' suggestions, it has been restructured to parallel more closely the organization in the May proposal of the closed—end credit advertising section.

While commenters suggested that the language "or otherwise determinable" be deleted, the Board believes that its retention is proper and necessary. This is based on the belief that where § 226.5(b) terms may in fact be implicit from an advertisement, the advertising provisions should apply.

The annual membership fee has been specifically included in the paragraph (b) list of additional required disclosures. Such fees are becoming increasingly more popular in open-end credit plans; consequently, the Board Believes that such information is an important shopping consideration when selecting an open-end credit plan.

Comment is expressly solicited as to whether downpayents are commonly involved in the use of open-end credit plans; it is the Board's belief that such is not the case at the present time and, therefore, the Board sees no need to include it as a "trigger" term for purposes of open-end credit advertising.

Proposed paragraph (b)(2) requires that, where a trigger term is involved, disclosure is required of any periodic rate that could be applied, expressed as a corresponding annual percentage rate. In response to comments, the Board wishes to clarify that, in its view, this language contemplates disclosure of *just* the corresponding annual percentage rate. In the Board's opinion, however, this provision would not preclude an advertiser from also stating the periodic rate.

The Board wishes to point out that an advertisement must state a credit term as a positive number in order to trigger additional disclosures. For example, "no annual membership fee" would not trigger the required advertising disclosures.

(c) *Catalog and multiple-page advertisements.* Paragraph (c) of the proposal deals with catalog and multiple-page advertisements. It corresponds to § 226.10(c) of the May proposal and § 226.10(b) of the existing regulation.

The phrase "credit term" has been deleted from subsection (c)(1) of the May proposal; this paragraph's requirements are now tied to the terms contained in § 226.5(b).

Proposed paragraph (c)(2) is the same as the May proposal. It incorporates portions of present Board Interpretation § 226.1002. In the Board's opinion, the inclusion of the $1,000 limitation in the proposal is unnecessary; the requirement that the table or schedule include disclosures for the more commonly sold higher-priced property or services offered incorporates the concept in existing § 226.1002 that tables or schedules provide representative disclosures. Moreover, the Board considers unnecessary, and contrary to the simplification effort, the inclusion of language about the table or schedule disclosing the method of computing the appropriate disclosures for amounts in excess of those disclosed in the table or schedule.

Section 226.10(d) of the May proposal, regarding oral disclosures in open-end credit, has been combined with § 226.14(f), regarding oral disclosures in closed-end credit, into a new § 226.29 in Subpart E. Commenters claimed that including the oral disclosure provisions in the advertising section is confusing since oral disclosures are not included in the advertisement definition in § 226.2.

Subpart C—Closed-End Credit

Subpart C includes all provisions relating specifically to closed-end credit transactions. In addition to a number of substantive revisions, the subpart has been substantially restructured for ease of reference and greater clarity. Section 226.11 of the May proposal, which contained all rules regarding closed-end credit disclosures, has been divided into four separate sections, §§ 226.17 through 226.20. Section 226.21, relating to credit balances, is new and implements § 165 of the act. Sections 226.22, 226.23, and 226.24 reflect §§ 226.12, 226.13, and 226.14, respectively, of the May proposal.

The concept of alternate shopping disclosures, which represented the most dramatic proposal in the May draft, has been deleted from this proposal. The provision, contained in § 226.(11) of the earlier draft, would have permitted creditors to make early advertising-type disclosures as an alternative to providing regular transactional disclosures. The Board received approximately 230 comments on this provision, and the great majority, reflecting virtually all segments of the credit industry, consumer groups, and federal and state agencies, were negative. The comments as a whole reflected a belief that the proposal was unnecessary and, to the extent that it was used at all, would result in further customer confusion and creditor expense. In view of these comments, the Board is eliminating the concept of alternate shopping disclosures from the regulation. The Board remains committed to enhancing the credit-shopping function of the act by encouraging early disclosure of credit terms. However, the Board believes that this commitment can be carried out by several less dramatic means, which are reflected in the new proposal. Among the revisions which should encourage early disclosure are the more flexible rules regarding the timing of disclosures and the use of estimates.

Section 226.17—General disclosure requirements.

Section 226.17 sets forth the general disclosure requirements previously contained in § 226.11(a) through (e) of the May proposal, with substantial deletion of material which the Board believes is unnecessary. The general rules regarding the timing, form and basis of disclosures are contained in paragraphs (a), (b), and (c) of the

section, which correspond to §§ 226.11(c)(1), 226.11(c)(3), and 226.11(d), respectively, of the earlier proposal.

(a) *Time of disclosures.* The revisions in this paragraph, formerly § 226.11(c)(1) of the May proposal, are primarily editorial. The first sentence continues to reflect the current regulatory requirement that disclosures be provided before consummation of the transaction. However, as noted in the discussion of § 226.2 above, the definition of consummation has been substantially revised. Consummation will be the time at which the consumer becomes contractually liable on the obligation, as determined by applicable law. The payment of a nonrefundable fee prior to that time does not serve to trigger consummation, contrary to the position taken in the May proposal and in current staff interpretations of the regulation.

Paragraph (b), formerly designated as §§ 226.11(c)(3) and 226.11(c)(4) in the May draft, has been significantly expanded and reorganized for increased clarity. Paragraph (b)(1) retains the requirement in the May draft and section 128 of the act that, as a general rule, all of the disclosures required by § 226.18 (Content of disclosures) must be grouped together and segregated from all other information not directly related to the disclosures. The term "directly related," as used in this standard, is construed very narrowly in order to carry out the congressional purpose in requiring segregation of Truth in Lending disclosures. Any information beyond that specifically called for by § 226.18, even information which provides further elaboration of required disclosures, would not be directly related to the disclosures and could not normally appear with them. This would include such information as a description of the type of security interest taken in a transaction or the conditions under which a prepayment penalty would be imposed.

Paragraph (b)(1) and accompanying footnotes contain special rules and exceptions to the general requirement of segregation of required disclosures. The last sentence of the paragraph *requires* that explanation of the amount financed under § 226.18(c) always appear separate from the segregated disclosures. The footnote *permits* three disclosures required by § 226.18 to appear apart from the segregated disclosures. These disclosures are the creditor's identity under § 226.18(a), credit life or property insurance premiums under § 226.18(n), and certain charges related to a security interest which are excludable from the finance charge under § 226.18(o). Any of these disclosures may appear with the segregated disclosures, together or separately on other documents, or combined with the disclosure of the amount financed explanation. The first footnote to paragraph (b)(1) specifically permits the inclusion of three additional items of information with the segregated disclosures: an acknowledgement of receipt, the consumer's name, and the consumer's account number. Other than these three specific items of information, the segregated federal disclosures required by § 226.18 may *not* include any other information.

Paragraph (b)(2), regarding use of the terms "finance charge" and "annual percentage rate," is substantially similar to § 226.11(c)(4) in the May proposal, with minor editorial revisions to reflect suggestions made by several commenters.

(c) *Basis of disclosures and use of estimates.* Section 226.17(c), based on § 226.11(d) of the May draft, is designed to provide guidance to creditors in making disclosures, particularly when the necessary information may not be known with any certainty at the time disclosures are made. This paragraph reflects a number of editorial changes, as well as several substantive revisions.

The most important change is contained in paragraph (c)(1). This paragraph is similar to the May proposal in requiring that disclosures reflect the best information available at the time of disclosure. But the disclosures must now be based on the *enforceable* obligation between the parties. The May draft reflects the current regulatory position that disclosures should be based on the actual agreement between the parties, even though that agreement may be contrary to the terms of the parties' legally-enforceable obligation. For example, the Board's staff has stated that Truth in Lending disclosures must be based on a voluntary payroll deduction plan or an informal principal reduction agreement, regardless of the fact that those agreements do not represent the enforceable obligation between the parties. This interpretation may not be compatible with the thrust of the Truth in Lending Act as amended, which is to provide customers with an accurate picture of the obligation to which they will be legally bound. In addition, the current standard has proven difficult in application and frequently complicates both the compliance and enforcement burdens. In light of these considerations, the Board now proposes to require that disclosures be based only on the enforceable obligation between the parties, and specifically solicits comment on this provision.

Paragraph (c)(2) is virtually identical to § 226.11(d)(2) in the May proposal except that the word "clearly" is deleted from the paragraph. Since all disclosures must be made clearly and conspicuously, the repetition of the standard in this paragraph is unnecessary. As under the current regulation, estimates must be designated as such in the segregated disclosures. However, no further explanation of the basis for the estimates may be included with those disclosures, although such explanation may appear as additional information apart from the disclosures.

Paragraph (c)(3), permitting certain factors to be disregarded in calculating the required disclosures, contains only one substantive change. Paragraph (c)(3)(ii) now permits creditors to disregard the fact that payment dates fall on a "day which is not a business day," rather than on a "Saturday, Sunday, or holiday." This change has been made in response to a number of comments pointing out that many creditors' business days do not coincide with regular weekdays. "Business day" is defined in § 226.2 of the proposal as those days on which the creditor is open to the public for substantially all of its normal business functions. This definition, which coincides with that contained in Regulation E, implementing the Electronic Fund Transfer Act, allows the creditor to define its business day according to its own practice.

Paragraph (c)(4), regarding certain payment schedule variations, contains editorial revisions which are not intended to change the substance of the paragraph. The introductory language has been revised, and the definitions contained in § 226.11(d)(4)(ii) of the May proposal have been incorporated into footnotes to the paragraph.

Section 121(d) of the act authorizes the Board to establish tolerances for numerical disclosures other than the annual percentage rate and, as discussed above in § 226.4(a), the Board is proposing a tolerance for disclosures of the finance charge. At this time, the Board is not considering similar tolerances for other numerical disclosures such as the amount financed, in the absence of any evidence indicating a need for such a tolerance. However, the Board solicits comment on whether such tolerances would be appropriate, as well as on the terms for which a tolerance is necessary and the degree of tolerance which should be provided.

Paragraph (c)(5), dealing with demand obligations, is similar to § 226.11(d)(5) in

the May draft, but the Board wishes to solicit comment on two issues not previously addressed will regard to this provision. First this paragraph reflects the concept of enforceability as the basis for disclosures, as noted in discussion of paragraph (c)(1). Disclosures for demand obligations should be based on an alternate maturity date, rather than an assumed maturity of one year, only in those cases in which the alternate maturity is reflected in an enforceable agreement between the parties. This is contrary to interpretations of the current regulation. Presently, an alternate maturity date may be inferred from an informal principal reduction agreeemnt or a similar understanding between the parties, and disclosures must be based on that alternate maturity. Under the revised paragraph, the obligation in such cases will be viewed as purely a demand obligation, unless the parties have agreed to a legally enforceable repayment schedule setting an alternate maturity date. The Board specifically requests comment on this proposal.

The alternate maturity provision of this paragraph raises a second issue which is related to a current Board interpretation. In addition to demand obligations which have a concurrent alternate maturity provision, certain obligations may call for a conversion to a demand status after a stated period. One example of this type of obligation is addressed in current Board Interpretation § 226.816. The Board proposes to eliminate that interpretation, which appears to have very limited applicability. In the Board's view, the fact that the demand feature is not immediately available to the creditor does not prevent these transactions from being considered demand obligations and the Board proposes to treat them as such under the new proposal. Thus, they would be subject to the general rule in paragraph (c)(5) and disclosures for these transactions would be based upon any enforceable alternate stated maturity. However, the Board specifically solicits comment on alternative ways of dealing with these obligations, as well as on their prevalence.

Paragraph (c)(6) is based on § 226.11(d)(6) of the May proposal but has been substantially revised. New paragraph (c)(6)(i) incorporates in its entirety the first sentence of paragraph (d)(6) of the May draft. The second sentence of that earlier proposal has been deleted. The Board believes that the separate financing of a downpayment in a credit sale transaction may be disclosed as two transactions pursuant to the general rule in that paragraph and that a specific rule for such transactions is unnecessary.

The purpose of paragraph (c)(6)(i) is to prevent creditors from artificially separating what is essentially one transaction into two or, on the other hand, consolidating two separate transactions into a single one, in order to distort and obscure the credit terms to which the consumer is agreeing. The Board is aware that the issue addressed by this rule has been the subject of numerous questions and several judicial decisions. In the Board's view, however, precise rules for determining what constitutes a single transaction are neither desirable nor possible, particularly in view of the enormous variety in credit transactions. Creditors should retain some flexibility in structuring transactions in order to meet the needs of their customers as well as their own operational requirements. Paragraph (c)(6)(i) is intended to reflect that position.

Paragraph (c)(6)(ii), relating to multiple advances under an agreement to extend credit up to a certain amount, is based on § 226.11(m) of the May draft. It would reverse the position taken in that draft and in the current regulation (§ 226.8(i)) by permitting a creditor either to treat all of the advances as a single transaction or to disclose each advance as a separate transaction. The Board believes that both approaches can provide meaningful disclosures to consumers and that mandating one method or the other is unnecessary. If these transactions are treated as one transaction and the timing or amount of advances is unknown, creditors must make disclosures based on estimates, as provided in proposed § 226.17(c)(2).

Paragraph (c)(6)(iii) provides a similarly flexible rule for disclosure of construction loans that may be permanently financed. These transactions have two distinct phases, similar to two separate transactions. The construction period usually involves several disbursements of funds at times and in amounts that are unknown at the beginning of that period and the consumer generally pays only accrued interest until construction is completed. Unless the obligation is paid at that time, the loan then converts to permanent financing in which the loan amount is amortized just as in a standard mortgage transaction. This special rule would permit the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for the two phases. It would be available whether the consumer was initially obligated to accept construction financing only or both construction and permanent financing. If the consumer is obligated on both phases and the creditor chooses to give two sets of disclosures, both sets must be given to the consumer initially, because both transactions would be consummated at that time.

Many commenters requested that the substance of present Board Interpretation § 226.813 be incorporated into the revised regulation because it provides guidance on making disclosures and calculations for multiple-advance construction loans. That interpretation has been revised and now appears as Appendix D to this proposed regulation. Its use is limited to multiple-advance loans for construction of a dwelling.

(d) *Multiple creditors; multiple consumers.* This paragraph reflects § 226.11(a) (1) and (2) of the May proposal but eliminates the general statements that a creditor must provide disclosures to a consumer. The Board believes that this material is unnecessary and has revised the paragraph to address only multiple-consumer and multiple-creditor transactions, where specific guidance may still be needed.

The first sentence has been redrafted to reflect the Board's concern that a consumer receive a complete document incorporating all of the credit terms that must be disclosed for that transaction. In a transaction involving multiple creditors, creditors should retain some flexibility in the way in which that set of disclosures is provided. For example, the creditors may agree to designate one creditor to assume that responsibility or the creditors may join in designing a single set of disclosures.

The change in the paragraph is not intended to absolve any creditor in such transactions from liability for failure to make disclosures. Regardless of the arrangements made between creditors, each creditor in the transaction is legally responsible for providing the disclosures and any one of them may be subject to liability for violations. However, fewer questions are likely to arise regarding multiple-creditor transactions because the revised definition of "creditor" will substantially reduce the number of transactions in which more than one party will be considered a creditor.

The second sentence in paragraph (d) carries forward the position taken in the current regulation and in the May draft, which require the creditor to make disclosures to a consumer who is primarily liable on the transaction.

(e) *Effect of subsequent events.* Paragraph (e)(1), relating to changes that occur after the delivery of disclosures, remains substantially similar to its counterpart in the May draft with only a minor editorial revision.

Paragraph (e)(2) differs significantly from its counterpart in the May draft. Under this paragraph, creditors need not provide new disclosures when the previously disclosed credit terms are rendered inaccurate before consummation. In the Board's view, this revision will help effectuate the credit-shopping goals of the act by promoting early disclosures. The requirement in the current regulation that creditors provide new disclosures when a term changes before consummation may have discouraged creditors from making any effort to disclose until the point of consummation. As in the current regulation, creditors may use estimates as provided in paragraph (d)(2). The requirement that estimates be based on the best information reasonably available should prevent creditors from making disclosures so early that reasonable accuracy is impossible. The Board solicits comment on whether this new proposal would permit any abuses and whether the "good faith" standard is sufficient to avoid any abuses.

Paragraph (e)(3), regarding changes after consummation, is substantially similar to § 226.11(e)(4) in the May draft with only minor editorial changes that do not alter the substance of the provision.

Section 226.11(e)(3) of the May draft has been eliminated entirely, since it addressed only alternate shopping disclosures.

(f) *Mail or telephone orders—delay in disclosures.* This provision, previously § 226.11(k) of the May proposal, has been slightly revised. Since some commenters questioned the meaning of "personal solicitation," that phrase has been replaced with the phrase "face to face or direct telephone solicitation." This change is meant to clarify that the provision is available when creditors use letters to solicit requests for credit. The solicitation referred to in this section is that done by the creditor itself or someone acting on the creditor's behalf.

A few commenters questioned how the listed information should be made available. The regulation does not specify how that is to be done, since that is a matter to be determined by the creditor. The reference to the "public generally" has been changed to "the public" to avoid the implication that the information must be made available to the world at large in order for the provision to apply.

The list of required information in paragraph (f)(1) has been reduced to more closely follow the statutory provision section 128(c)) and to parallel the revised advertising provisions. The references to downpayments and total of payments have been eliminated and "the number, amounts, and timing of payments" has been replaced by "the terms of repayment." The explanation of what is required by this term is set forth more fully in the material accompanying proposed § 226.24(c), below. The information need be given only as applicable.

Some commenters pointed out the difficulty faced by creditors when credit insurance is written in connection with mail and phone orders, since the May proposal would have required the insurance authorization to appear with the other disclosures. Since the location requirements for the insurance disclosures have been revised to permit them to appear apart from the other disclosures, a creditor could mail an insurance authorization to the consumer and then prepare the other disclosures to reflect whether or not the authorization is completed by the consumer. Disclosing the insurance cost on a unit-cost basis further simplifies the disclosures.

(g) *Series of sales—delay in disclosures.* This paragraph was previously § 226.11(l) of the May draft. The revisions in the first paragraph are primarily editorial. Language has been added to clarify that the delay provision applies to the disclosures pertaining to the current sale. Paragraph (1)(2) from the May proposal has been deleted in light of the revised standard for what constitutes a refinancing under § 226.20(a). If the conditions listed in the first paragraph are not met, the transaction may be a refinancing; alternatively, disclosures for the current sale would be given before consummation of that sale.

Section 226.18—Content of disclosures.

Section 226.18 sets forth the disclosures required in a closed-end transaction. Although it is based closely on § 226.11(f) of the May draft, it has been the subject of a number of editorial and several substantive revisions.

The introductory paragraph deletes the second sentence from the May draft, requiring creditors to include a brief identification and the amount of each disclosure where applicable. These requirements are already mandated by both the substantive provisions of the paragraph and the general "clear and conspicuous" requirement proposed in § 226.17(b).

The disclosures required by this section need by made only as applicable, meaning that any disclosure not relevant to a particular transaction may be eliminated entirely. For example, in a loan transaction, the creditor may delete any disclosure of the total sale price. Similarly, even in a credit sale requiring disclosure of the total sale price under paragraph (j), the creditor may delete any reference to a downpayment where no downpayment is involved.

Where the amounts of several numerical disclosures are the same, the "as applicable" language would also permit creditors to combine the terms, so long as it is done in a clear and conspicuous manner. For example, if in a particular transaction the amount financed equals the total of payments, the creditor may disclose "amount financed/total of payments," together with descriptive language, followed by a single amount. However, if the terms are separated on the disclosure statement and separate space is provided for each amount, both disclosures must be completed, even though the same amount is entered in each space.

Paragraph (f)(17) of the May draft has been deleted and the substance of that provision incorporated as footnotes in § 226.18. The footnote to the introductory portion of the section restates the special rules for interim student loans previously in § 226.11(f)(17)(i). The footnote also includes a definition of interim student loans, which have not previously been defined in the regulation. The Board specifically solicits comment on this definition. Sections 226.11(f)(17)(ii) and (iii) are now reflected as footnotes to paragraphs (e) and (h), respectively.

For ease of reference, each of the 17 paragraphs in § 226.18 has been provided with its own caption, briefly identifying the credit term addressed in that paragraph.

As in the May draft, five of the disclosures required by the section must be further explained to the consumer in a manner similar to the descriptive phrases shown in the regulation. Although the new proposal changes the language "accompanied by" to "and," the Board wishes to emphasize that this change is merely editorial. Creditors may not separate the required term and its descriptive phrase in such a manner as to obscure their relationship to each other.

(a) *Creditor.* This paragraph is unchanged from § 226.11(f)(1) of the May draft. Use of the creditor's name would, in the Board's view, be sufficient to comply with this requirement, but the

creditor may at its option include an address or telephone number.

(b) *Amount financed.* Paragraph (f)(2) of the May draft, regarding the amount financed, has been divided into paragraphs (b) and (c) of the current proposal, for greater clarity. New paragraph (b) requires disclosure of the amount financed and states the method of calculating that amount, while new paragraph (c) sets forth the rules regarding the explanation of the amount financed.

Paragraph (b) (1) through (3) corresponds to paragraph (f)(2)(i) (A) through (C) of the May proposal. Both the terminology and the calculation steps are unchanged, but the provision has been redrafted to clarify several questions raised by commenters on the May draft.

A number of commenters questioned the Board's use of the term "principal amount of the loan" as the starting point for amount financed calculations in loan transactions. They pointed out that "principal" may include finance charges such as precomputed interest which is added to the face amount of the obligation. Since such amounts normally would not be considered prepaid finance charges and thus would not be deducted from the loan amount under the regulation, the calculated amount financed might impermissibly include a portion of the finance charge. Paragraph (b)(1) has been redrafted to clarify that for purposes of calculating the amount financed, the loan principal cannot include any finance charges.

The second portion of paragraph (b)(1), relating to credit sales, has also been revised. The reference to a trade-in has been deleted as unnecessary, since "downpayment" is now defined in § 226.2 to include the value of any trade-in.

Paragraph (b)(2) reflects in an abbreviated form the substance of § 226.11(f)(2)(i)(B) of the May draft. It refers primarily to those charges which under the current regulation would be characterized as "other charges" under § 226.8 (c) and (d). These would normally include any fees which are not part of the finance charge to the extent that the customer decides to finance them rather than paying them separately at consummation of the transaction. As before, this paragraph would not encompass any charges which are part of the finance charge nor may it include any amounts already accounted for under paragraph (b)(1).

Paragraph (b)(3) requires the deduction of any prepaid finance charges from the amount financed. The parenthetical material in § 226.11(f)(2)(i)(C) of the May draft has been deleted, because "prepaid finance charge" is now defined in § 226.2 of the current proposal, for ease of reference. The basic definition of the prepaid finance charge and its role in calculation of the amount financed remain unchanged.

(c) *Explanation of amount financed.* This paragraph requires a written explanation of the amount financed, at the customer's request, and reflects § 226.11(f)(2)(ii) of the May draft. The Board believes that the term "explanation" is more appropriate than "itemization," which was used in the May proposal. No substantive change is intended.

The current proposal differs significantly from the earlier draft in four respects. First, the paragraph has been rewritten to permit creditors to provide a written explanation of the amount financed without a request from the customer. Only if the creditor does not provide an explanation as a matter of course must the creditor give the customer a statement of the customer's right to receive such explanation. This is a significant departure from the May draft, which required that the creditor inform the customer in writing of the customer's right to receive the explanation and await the customer's request before providing that information. In the Board's view, the legislative history of the act indicates that Congress intended creditors to have either alternative available to them in complying with this provision.

Second, §§ 226.11(f)(2)(ii) (B) and (C) of the May draft, relating to the timing and location of this disclosure, have been deleted. These questions are now addressed in § 226.17 of the new proposal. As in the May draft, the explanation must appear separately from the remainder of the disclosures, but it must now be provided at the same time as the other disclosures.

Third, the list of items that must be disclosed as part of the explanation has been reduced by deletion of the cash price, cash downpayment and trade-in. While these amounts may be of some assistance in providing a mathematical progression for the explanation, their inclusion is not mandated by the statute.

Fourth, paragraph (c)(1)(iv), reflecting a portion of § 226.11(f)(2)(ii)(A) of the May draft, makes clear that the creditor must identify third persons receiving amounts on the consumer's behalf. The second sentence of that paragraph provides a special exception in the case of amounts forwarded to public officials or governmental agencies. These amounts typically include such items as notary fees, fees paid to a department of motor vehicles for licenses and fees paid to public officials for filing or releasing a security interest. Creditors need not list each individual official or agency receiving these amounts, but may consolidate them under a single heading such as "government officials" or "government agencies."

To assist creditors in complying with this provision, the Board has included in Appendix G a model form for explanation of the amount financed. While the Board believes that creditors should be given a considerable amount of flexibility in complying with this requirement, some precision in this aspect of the regulation is necessary and appropriate, both to provide further guidance to creditors and to prevent unnecessary confusion to consumers. Therefore, the Board proposes to apply several specific guidelines to completion of these forms and requests comment on them. First, the categories shown in the list must be mutually exclusive. For example, any amounts included in the prepaid finance charge should not be reflected in amounts paid to third parties. A credit report fee is often paid to third parties and in a nonrealty transaction is part of the finance charge. If this amount is paid at consummation of the transaction, it consitutes a prepaid finance charge that must be included in the total disclosed under paragraph (c)(1)(i) and not reflected in the list of amounts shown under paragraph (c)(1)(iv).

Second, the model form does not require the amounts to be shown in any mathematical order or progression. In the Board's view, the categories required by the act do not, without the addition of further categories, lend themselves to an arrangement in a mathematical progression in most cases. In the interest of simplification, the Board does not believe that the inclusion of further disclosures or instructions in order to arrange the terms in an arithmetic manner would be appropriate. Third, as noted above, the Board has created one category of third party fees which need not be specifically identified beyond "payment to public officials" or similar language. This category is reflected on the model form and the Board solicits comments on any other categories which may be appropriate.

The Board also wishes to draw attention to § G(4) of Appendix G, which provides a special model form for transactions subject to the Real Estate Settlement Procedures Act (RESPA). That act requires creditors to provide a good faith estimate of closing costs which is in many respects similar to the amount financed explanation required by paragraph (c). The legislative history

of the Truth in Lending revisions indicates that Congress intended to allow creditors subject to RESPA to combine these two requirements, and § G(4) provides a special model form for this purpose. The Board solicits comment on its utility and particularly welcomes suggestions on ways to make the form more useful to creditors subject to both acts. The Board also solicits comment on whether the RESPA good faith estimates alone may be sufficient, without further change, and whether creditors subject to RESPA should therefore be exempt from paragraph (c) entirely.

(d) *Finance charge.* This paragraph corresponds to § 226.11(f)(3) of the May draft, and requires disclosure of the finance charge. However, unlike its earlier counterpart, it no longer requires creditors to use the precise descriptive phrase contained in that paragraph.

(e) *Annual percentage rate.* Unlike § 226.11(f)(4), its counterpart in the May proposal, this paragraph does not require creditors to use the exact descriptive phrase contained in the provision in describing the term.

(f) *Variable rate.* This paragraph corresponds to § 226.11(f)(5) of the May proposal and requires disclosure of a variable rate provision in a credit transaction. Although the earlier draft eliminated the current requirement for disclosure of hypothetical increases in the rate, the Board now proposes to reinstate that requirement for residential mortgage transactions. For two reasons, the Board believes that information regarding the effects of an increase in the interest rate, at least on the payment schedule, may be warranted in these transactions. First, these transactions typically involve unusually large amounts of money and thus represent the most important credit transaction entered into by a consumer. Second, variable rate provisions are becoming increasingly common in such transactions. Therefore, the Board proposes to require creditors in residential mortgage transactions to provide consumers with an example of the payment terms which could result from an increase under a variable rate provision.

No specific numerical basis for the hypothetical is required, unlike the ¼ of 1% basis required by the present regulation. In view of the enormous variety in variable rate provisions, the Board does not believe that any specific requirement in the regulation will necessarily reflect the best example for a particular creditor's plan. Therefore, the Board proposes to allow creditors to design the hypothetical disclosures, based on the terms of the individual plan. Comment is solicited on this matter.

This proposal eliminates two footnotes to the variable rate disclosure requirement, which are contained in the May proposal. These footnotes relate to the types of rate increase subject to the disclosure requirement and the types of limitation on increases not intended to be subject to this provision. In the Board's view, the material contained in those footnotes is merely intended to elaborate on the regulatory language and is more appropriate for the commentary. As stated in those footnotes, the limitations referred to in paragraph (f)(2) do not include any limits imposed by law, such as state or federal statutes or regulations, nor does paragrah (f) apply to increases resulting from delinquency (including late payment), default, assumption or transfer of the collateral.

This paragraph is also intended to address the substance of FC–0172, a recent official staff interpretation regarding renegotiable rate mortgages. That interpretation, effective September 23, 1980, permits creditors to disclose such transactions as either variable rate transactions or ballon payment mortgages, since they share the characteristics of both of those types of transactions. As emphasized in that interpretation, this alternative treatment is intended to be a temporary measure until the question can be resolved under the revised regulation. The Board now proposes to treat these mortgages as variable rate transactions subject to the disclosure requirements of § 226.18(f), in the belief that they more closely resemble true variable rate transactions. Thus, as of March 31, 1982, when the interpretation expires, the disclosures required by this paragraph, as ultimately adopted by the Board, must be made in conjunction with these transactions.

(g) *Payment schedule.* This paragraph, which requires disclosure of the payment schedule, is unchanged from § 226.11(f)(6), its counterpart in the May proposal, but the Board wishes to address several issues raised by the comments on this provision.

First, as indicated in the May proposal, "timing" has the same meaning as the language "due dates or periods" used in the current regulation. As in the May draft, the requirement in the current regulation for labelling an unusually large payment as a "balloon payment" has been eliminated.

Second, a number of comments on the footnote to this paragraph reflected some misunderstanding of the application of the footnote. As an alternative to showing each payment, the footnote allows an abbreviated disclosure of payment schedules involving varying payment amounts. If the amount of one payment in a group of payments is not more than five percent greater than the smallest payment in that series, the creditor may disclose the largest payment, together with the number of payments at that amount, labelling the disclosure as an estimate. This provision may be used for any series of payments within the payment schedule, even where the entire payment schedule contains a variation of more than five percent from the highest to the lowest payment. For example, where the first payment is 12 percent larger than the last payment, the creditor may divide the total payment schedule into three series and base its payment disclosure on the largest payment amount in each of those three series. In addition, the payment schedule variations need not be based on any particular progression. While the example used contemplates a consistent progression from a high first payment to a low final payment, this special provision may be used for different types of variations, including recurring increases and decreases.

The five percent tolerance used in the footnote appears to be adequate to encompass the most common variable payment transaction, based on the information currently available. However, the Board would consider a slightly larger tolerance if further comments indicate that a small increase in this standard would enable many more transactions to take advantage of this rule. Specific comment regarding this issue is solicited.

Third, a number of commenters asked whether the payment schedule might include amounts beyond the amount financed and finance charge. Official staff interpretation FC–0157 permits certain insurance premiums to be included in the payment schedule disclosure, even though the premiums are not part of either the amount financed or the finance charge in the transaction. Real estate escrow amounts, such as taxes added to the payment in mortgage transactions, represent another type of charge which is not part of the amount financed or the finance charge. The Board proposes to define the "payments" referred to in paragraph (g) as those which reflect only the amount financed and finance charge for the transaction, which would exclude those escrow amounts and charges of the type described in FC–0157.

Fourth, several commenters inquired about the continued applicability of official staff interpretation FC–0123

under the proposed regulation. That interpretation makes clear that prepaid finance charges, such as interim interest collected at consummation of the transaction, are not considered "payments" within the meaning of paragraph (g) and should not be reflected in the payment schedule. That interpretation remains valid, but the Board does not believe any revision to the regulation itself is necessary to specifically incorporate that position.

Fifth, a number of commenters requested clarification of the status of Board Interpretation § 226.808 under the proposed regulation. That interpretation permits creditors to make an abbreviated payment schedule disclosure where the application of a rate to a declining balance creates irregular payment amounts. That interpretation would be eliminated but many transactions currently taking advantage of it will be able to use the special rule provided in the footnote to paragraph (g) as an alternative.

(h) *Total of payments.* This paragraph, requiring disclosure of the total of payments, contains one substantive and two editorial changes from § 226.11(f)(7) of the May proposal. First, creditors may base the total of payments on the exact payment schedule, even though they utilized the five percent tolerance in disclosing the payment schedule.

Second, the suggested descriptive language has been changed, in response to many comments regarding the tense used in the phrase.

Third, a footnote incorporates the substance of § 226.11(f)(17)(iii) of the May draft, permitting creditors to omit disclosure of the total of payments in single-payment transactions. This exception would not apply to a transaction calling for a single payment of principal combined with periodic payments of interest.

(i) *Demand feature.* This paragraph, which requires special disclosures for demand obligations, amends the language of § 226.11(f)(8) of the May draft from "obligation is payable on demand" to "obligation has a demand feature." This change is intended to clarify that the disclosure requirements of this paragraph would apply to transactions which are not payable on demand at the time of consummation but convert to a demand status after a stated period. The transaction described in Board Interpretation § 226.816 is an example of one such transaction. As discussed in § 226.17(c)(5), the transactions addressed in that interpretation would be considered demand obligations subject to paragraph (i).

The type of demand feature triggering the disclosures required by this paragraph is intended to include only those demand features contemplated by the parties as part of the agreement. For example, this provision would not apply to transactions which convert to a demand status as a result of the customer's default.

Board Interpretation § 226.815 provides a special rule for disclosure of the payment schedule and other terms in a demand obligation. This interpretation will not be incorporated into the revised regulation. Demand obligations will be subject to the same disclosure requirements as other transactions, including requirements for disclosure of the payment schedule. Thus, if a demand loan calls for periodic interest payments, the number, amounts and timing of those payments must be disclosed under paragraph (g). In the Board's view, since other demand loan disclosures (in the absence of an alternate maturity) are based on an assumed one-year maturity, the payment schedule disclosure should also be based on the same term. However, comment is solicited on this issue.

A model clause for disclosure of a demand feature is provided in § G(7) of Appendix G. The Board solicits comments on any alternative language that might be provided for this model, particularly in view of the revisions to this paragraph.

(j) *Total sale price.* This paragraph, which requires disclosure of the total sale price in a credit sale transaction, is substantially similar to § 226.11(f)(9) of the May proposal. The reference to downpayment in the descriptive language accompanying that term prompted many questions from commenters regarding the continued availability of Interpretation § 226.504, dealing with deferred downpayments. As discussed in § 26.2, a new definition of downpayment has been added to the regulation to address these questions.

Since all the disclosures required by § 226.18 need be made only "as applicable," creditors may revise the descriptive language for this paragraph to eliminate any reference to a downpayment, in transactions calling for no downpayment. For example, the descriptive explanation may state "the total price of your purchase on credit."

(k) *Prepayment.* This paragraph requires that the consumer be told whether or not a penalty will be imposed or a rebate given in the event of prepayment of the obligation in full. It has been substantially revised from both § 226.11(f)(10) of the May proposal and § 226.8(b) of the current regulation.

Paragraph (k)(1) corresponds generally to § 226.11(f)(10)(ii) of the May proposal and applies to simple interest obligations. Paragraph (k)(2) reflects § 226.11(10)(i) of the May draft and covers transactions involving precomputed finance charges. These two paragraphs, like §§ 226.8(b)(6) and 226.8(b)(7) of the present regulation, are intended to distinguish two separate types of transactions according to the nature of the finance charges imposed. The Board recognizes that this distinction has been the source of confusion, compounded by the fact that a single transaction may actually include both types of charges.

The current proposal represents an effort to provide further guidance on the distinctions between these types of transactions. Paragraph (k)(1) defines simple interest obligations very narrowly to include only those transactions in which the interest calculation takes account of each reduction in principal. Paragraph (k)(2) encompasses any finance charges which do not meet the requirements of paragraph (k)(1) and in that sense is a much more inclusive category. The Board recognizes that such an approach may exclude from the first paragraph certain types of charges, such as mortgage insurance premiums, which may be calculated on the basis of a declining principal balance but do not take into account each principal reduction. In the Board's view, while alternative approaches may also have merit, a precise and easily-applied rule is necessary to alleviate confusion regarding these disclosures. The Board specifically solicits comment on this approach.

In addition to the change described above, paragraph (k) has been revised in several other respects. Paragraph (k)(1) now states "whether or not a penalty may be imposed," rather than "if a penalty will be imposed." The substitution of "whether or not" for "if" more accurately reflects the statutory language, although the Board recognizes that this language may be interpreted as requiring a negative disclosure where no penalty is imposed. The change in tense is designed to alleviate the concerns expressed by commenters regarding the use of the phrase "will be imposed." Many credit contracts call for the imposition of prepayment penalties only if the loan is paid off within a certain period after consummation or under other special circumstances and commenters were concerned that an absolute statement regarding imposition would be misleading. Even where the contract places conditions on the

imposition of such a penalty, this paragraph requires only a simple statement of wherether or not a penalty may be imposed.

The word "penalty," as used in paragraph (k)(1), encompasses only those charges which are assessed strictly because of the prepayment in full of the obligation, as an addition to all other amounts. Charges assessed or contemplated at the outset of the transaction, such as points in a mortgage loan, would not be considered a penalty for purposes of this paragraph.

Paragraph (k)(2) eliminates any reference to "precomputed finance charges," which has been the source of some confusion, but, in a substantially revised form, continues to require the same information currently required. The focus of the disclosure has been shifted, however, from whether the consumer may receive a rebate to whether the consumer may be excused from paying the entire finance charge if the obligation is prepaid in full. Comment is solicited on this proposal.

Paragraph (k) has also been revised by the addition of the phrase "whether voluntarily or not" in response to questions regarding the type of prepayment subject to this provision. Although acceleration is no longer specifically addressed in the paragraph, the language used is designed to encompass prepayments resulting from acceleration as well as other events.

(l) *Late payment.* This paragraph, which requires disclosure of late payment charges, is unchanged from § 226.11(f)(11) of the May proposal, but the Board wishes to address several issues raised by the comments regarding this provision.

First, as noted in the May proposal, this disclosure relates only to charges imposed before maturity; unlike the current regulation, it requires no disclosure of default charges. If the creditor considers the loan as in default, any charges assessed as a result would not be disclosed under this paragraph. The only charge that must be disclosed under paragraph (1) is an additional charge incurred solely by reason of a late payment. Previous staff opinion letters such as official staff interpretation FC–0054, relating to the proper disclosure of default charges, will not be incorporated into the new regulation since the questions they address will no longer arise.

Second, the continued accrual of simple interest at the contract rate between the payment due date and the actual payment date does not constitute a late payment charge, as that term is used in this paragraph. The additional interest assessed for this period is not disclosable under this paragraph.

(m) *Security interest.* This paragraph, requiring disclosure of a security interest, has been revised from § 226.11(f)(12) of the May draft by the deletion of the second sentence, relating to after-acquired property. Disclosure of this provision is not mandated by the statute and the Board believes that its elimination is in accord with the goals of simplification.

As noted in the May proposal, this disclosure has been significantly reduced by statute from its counterpart in the current regulation. The paragraph no longer requires disclosure of the type of security interest taken. In addition, the creditor need not further describe the property to which the security interest attaches if the property purchased with the credit serves as collateral for the obligation. The **Federal Register** material accompanying the May proposal limited this aspect of the paragraph only to credit sale transactions. Under the new proposal, however, any transaction in which the credit is being used to purchase the collateral is considered a purchase money transaction and may use the more abbreviated property identification disclosure required for those types of transactions, even when the obligation does not meet the definition of a credit sale.

In non-purchase money transactions, the property subject to the security interest must be identified by "item or type." This disclosure would be satisfied by a general disclosure of the category of property subject to the security interest, such as "household goods." At the creditor's option, however, a more precise identification of the goods may be provided.

The question of what constitutes a security interest that must be disclosed under this paragraph is addressed in the definition of a security interest in § 226.2 of the proposal. As noted in that discussion, the definition is much narrower than that used in the current regulation. It excludes many incidental property interests, such as an interest in insurance proceeds, unearned insurance premium rebates, accessions and improvements.

(n) *Insurance charges.* This paragraph requires disclosure of the information outlined in § 226.4(d), if creditors wish to exclude credit life and property insurance premiums from the finance charge. The only revision to this paragraph is the substitution of the word "items" for the word "disclosure," with no change in meaning intended.

As noted in discussion of § 226.17(b)(1), this disclosure is one of three § 226.18 terms which may appear apart from the other disclosures. If this disclosure is made separate from the other transactional disclosures, it may appear with any other information, including the amount financed explanation, any information prescribed by state law or other supplementary material.

Several commenters asked that the Board authorize as part of this disclosure the statement that insurance coverage is based on an acceptance of the insured by the insurance carrier. This statement is not required by the regulation and, in the Board's view, its inclusion would be contrary to the goals of simplification. If the creditor wishes to make the statement, it must be treated as additional information and appear apart from the segregated disclosures.

(o) *Excludable charges.* This paragraph, § 226.11(f)(14) in the May draft, requires disclosure of certain charges associated with a security interest, if the creditor wishes to exclude those charges from the finance charge. This disclosure is identical to its counterpart in the May proposal and, like paragraphs (a) and (n) above, is one of three disclosures which may appear, at the creditor's option, apart from the other § 226.18 disclosures.

(p) *Contract reference.* This paragraph, requiring a reference to the contract documents for certain additional information, has been revised from § 226.11(f)(15) of the May proposal by the addition of a second sentence. This amendment permits the creditor to include in the statement a reference to contract information regarding a security interest and the creditor's policy regarding assumption of the obligation. While these items are not part of the information required by § 128(a)(12) of the act, the Board believes that their inclusion may be useful to consumers and solicits comment regarding this provision. Comment is also solicited on whether these references should continue to be at the creditor's option or should be made mandatory.

The Board also solicits comment on whether the language of paragraph (p) should be used precisely in complying with the regulation or whether creditors may alter this statement to provide further information. For example, several creditors asked whether a reference to the specific contract document, such as "promissory note" or "retail installment contract," could be substituted for the more general phrase "contract document." The Board is also considering whether the statement required by this paragraph may be

divided and its component parts placed with the particular disclosures to which they relate. For example, the statement "see your contract for further information regarding prepayment" could accompany the disclosure made under paragraph (k) if this approach were adopted. Comment is specifically solicited on this aspect of paragraph (p).

(q) *Assumption policy.* This paragraph, which requires creditors in residential mortgage transactions to state their assumption policy, is based on § 226.11(f)(16) of the May proposal. It has been amended to emphasize that an absolute statement of assumability is not required. Many creditors expressed concern that the May proposal would commit them to permitting assumptions, when their assumption policy was based on a variety of circumstances which could not be foreseen at the time the disclosure is made. The language of this proposal requires only that the consumer be told whether or not a subsequent purchaser "may be permitted" to assume the obligation on its original terms. A footnote has been added to this paragraph to clarify the meaning of the phrase "original terms."

Section 226.19—Certain residential mortgage transactions.

This section, which implements § 128(b)(2) of the act, was previously reflected in § 226.11(g) of the May draft. It requires early disclosure of credit terms in residential mortgage transactions that are subject to the requirements of the Real Estate Settlement Procedures Act (RESPA). Truth in Lending disclosures must be given either within three business days after the creditor's receipt of a written application from the consumer or before consummation, whichever is earlier. The three-day requirement coincides with the time period within which creditors subject to RESPA must provide a good faith estimate of settlement costs.

While paragraph (a) is unchanged from § 226.11(g)(1) of the May proposal, many commenters requested that "application" be more precisely defined. In light of congressional intent that RESPA and Truth in Lending disclosures be coordinated, the Board proposes to use the same definition of "application" as is used in RESPA. That act provides that disclosures must be given for each "written application on an application form or forms normally used by the lender." If a lender does not use written applications, disclosures must be given within three days after any information about an applicant is committed to writing. Comments were received suggesting several different definitions of "application," and the Board solicits comment on its choice of the RESPA definition.

Several commenters asked that regardless of how "application" is defined, the regulation exempt from the disclosure requirements any applications that are rejected by a creditor within three days. In the Board's view, Truth in Lending disclosures are not necessary where the creditor knows within that period that no transaction will occur and the Board proposes to exempt creditors from making disclosures in such cases. Comment is solicited on this issue.

The change from the May draft's definition of "business day" should alleviate some of the problems raised by creditors with regard to making disclosures under this paragraph. The new definition includes only days on which a creditor's offices are open to the public for carrying on substantially all business functions and creditors may measure the three business day period according to their own business practices.

The tolerance governing whether new disclosures must be made at a later time, which is contained in paragraph (b), has been revised from its counterpart in § 226.11(g)(2) of the May draft to reflect the new proposed tolerance in § 226.22. The general tolerance continues to be ⅛ of 1 percentage point above or below the annual percentage rate originally disclosed, but irregular transactions will now be measured against a new tolerance of ¼ of 1 percentage point. This wider tolerance would be available for any transaction involving multiple advances, irregular payments or irregular periods.

Paragraph (b) has been significantly amended to require redisclosure only of changed terms, rather than a complete set of new disclosures, in the event that the annual percentage rate is determined to be beyond the tolerance. Many commenters suggested this alteration to alleviate the burden of redisclosure. They expressed concern that redisclosure would normally be required because the annual percentage rate between the time of application and the time of consummation would usually vary by more than ⅛ of 1 percentage point. Comment is requested on how frequently the problem of redisclosure would arise, particularly in light of the increased tolerance, and on whether redisclosure of only changed terms would alleviate this problem.

Section 226.19 has been changed from § 226.11(g) of the May draft to require that redisclosure be made not later than consummation, instead of not later than consummation or settlement. Commenters were confused as to whether these terms were intended to signify one event or two different events since consummation and settlement do not occur at the same time in some jurisdictions. In addition, the term "settlement" could refer to any one of a number of events occurring during the settlement process. In the Board's view, limiting redisclosure to "consummation," which is a defined term, will help to simplify and add certainty to the regulation. This approach may also best effectuate the congressional intent to coordinate Truth in Lending and RESPA disclosures.

Several commenters asked that the Board clarify the relationship between the good faith estimates of settlement costs required under RESPA and the explanation of the amount financed required under Truth in Lending. The legislative history indicates that Congress envisioned a combined disclosure which could satisfy the requirements of both statutes and a model form for that purpose has been provided in §G(4) of Appendix G.

The Board recognizes that a variety of special types of mortgage transactions have become increasingly common in the housing finance industry and are not specifically addressed in the regulation. These include so-called "wrap-around mortgages" such as that addressed in official staff interpretation FC–0146, mortgages with demand features similar to those discussed in Board Interpretation § 226.816, and "shared equity" or "shared appreciation" mortgages. This last type of transaction may involve numerous variations in individual plans, but is characterized by two types of charges. First, it bears a fixed rate of interest set below the prevailing market rate. In addition, the loan is subject to "contingent" interest, based on a specified percentage of the borrower's equity in the mortgaged property. This portion of the charge is payable at the earlier of payment in full of the obligation, or the sale or transfer of the property. For example, the monthly amortization payments on the obligation may be based on a fixed interest rate of 9%; on the subsequent sale of the property, the borrower is also obligated to pay the creditor an amount equal to 40% of the net appreciated value of the property. Several of these plans have been subject to regulation by the Federal Home Loan Bank Board. The Board solicits comment on whether these transactions warrant specific treatment in Regulation Z. Comment is particularly welcome on the special disclosure problems, if any, posed by such transactions and on whether their

coverage by other regulations should affect the application of Regulation Z to them.

Section 226.20—Subsequent disclosure requirements.

(a) *Refinancings.* This paragraph substantially alters the concept of refinancing, as that term is defined in § 226.11(i) of the May proposal and § 226.8(j) of the current regulation. The two latter provisions generally define a change in the original terms as a refinancing, subject to a variety of exceptions and special rules. Under the new proposal, a refinancing which requires new Truth in Lending disclosures occurs only when an existing obligation is satisfied and replaced by a new obligation.

The focus of Truth in Lending disclosures, at least with respect to closed-end credit transactions, is on providing consumers with information about credit terms before they enter into a transaction. The act itself does not address events occurring after consummation; the concept of refinancing, as well as other post-consummation events such as an assumption, was added to the regulation by the Board. The Board's primary concern in creating this concept was to address the practice of "flipping," in which a loan involving precomputed finance charges is prepaid and replaced with a new obligation. Depending on the rebate method used in calculating unearned finance charges on the existing obligation, this practice may permit lenders to obtain a higher yield on the loan than they would have obtained had the loan been paid off according to its original terms. While the refinancing provision does not prohibit this practice, it may provide consumers with useful information regarding its effect on the cost of credit.

The standard used in the current regulation to define a refinancing requiring new disclosures has been very difficult to apply, as evidenced by the many letters, interpretations and special rules which have evolved from this provision. Particularly in view of the fact that this concept is purely a creature of the regulation, the Board believes that the current revision of the regulation presents a unique opportunity to thoroughly reexamine this approach and explore alternatives.

While the May proposal differed somewhat from the current regulation, it retained the present approach of treating any change in terms as a refinancing, subject to a number of exceptions listed in §§ 226.11(i) (2), (3) and (4) of that proposal. Many commenters criticized this approach as unnecessarily broad and suggested that the Board define refinancings in a manner similar to the way in which that term is used in the credit industry, to refer only to the extinguishing of a debt and its substitution with a new obligation.

For three reasons, the Board now proposes to adopt this substantially altered definition of refinancing. First, the Board believes that this definition most closely resembles the types of transactions intended to be covered by the original refinancing concept. Second, the proposal focuses specifically on those changes that are most analogous to new credit transactions and thus represent true credit-shopping events. Third, the proposal may provide a simpler and more precise standard for determining when a refinancing requiring a new disclosure occurs.

The Board recognizes that this standard may substantially alter the distinctions drawn in the current regulation and related interpretations between refinancings and changes not requiring new disclosures. The Board solicits comment on this proposal and particularly on how it would affect those changes in terms that were specifically exempted from the refinancing definition in the May proposal. These changes include deferrals of payments, reduction of the annual percentage rate, court-approved agreements, renewals of single-payment obligations and changes made as a result of default.

(b) *Assumptions.* This provision has been revised from § 226.11(j) of the May draft to clarify when new disclosures must be given to an assuming party. First, the provision applies only to residential mortgage transactions, which represent the type of transaction in which assumptions are most common and most important.

Second, the provision has been revised to require new disclosures only where the agreement to accept a new obligor is in writing. This is the standard used under the present regulation for determining whether disclosure responsibilities arise. Comment was solicited in May about whether the writing requirement should be retained or eliminated and the commenters overwhelmingly favored its retention.

Finally, the word "expressly" has been added to the first sentence to stress that the creditor has disclosure responsibilities only when it has specifically agreed to accept another person as an obligor.

Mere approval of creditworthiness or notification of a change in records would not constitute an assumption. The retention of the original consumer as an obligor on the transaction, however, does not prevent the change from constituting an assumption for purposes of the regulation.

Some commenters expressed concern about use of the term "subsequent consumer," particularly since it might include guarantors added after consummation of a transaction. The provision has been revised so that only those parties who become primary obligors will receive new disclosures.

The Board wishes to emphasize two additional points regarding the scope of paragraph (b). First, it applies only to consumer credit obligations that are assumed by another consumer. It does not address whether a consumer taking over the obligation of a corporation, for example, is entitled to Truth in Lending disclosures. Second, it applies only when the terms of the existing obligation are unchanged (except for the imposition of an assumption fee). If the interest rate on an obligation is increased when a new party is accepted on a mortgage loan, this would not be considered an assumption governed by this provision, but rather would be considered a different transaction altogether, to be measured against the general standard of coverage of Regulation Z.

The provision continues to require that assumption disclosures be based on the remaining obligation, which may include items such as payment arrearages, late payment charges and collection costs. If these items are part of the obligation undertaken by the subsequent customer and are not prepaid, they should be reflected in the new amount financed.

Some commenters on the May proposal requested further guidance on the content of assumption disclosures and suggested that the substance of present Board Interpretation § 226.807 be incorporated. Simple interest transactions do not appear to require special rules in the new regulation, but the Board solicits comment on whether it is necessary to provide special rules for other types of transactions. Comment is requested on what specific problems would be faced in making new disclosures on all obligations, how frequently the problems would arise, and how those problems should be handled in the final regulation.

Section 226.21—Treatment of credit balances.

This provision is new and establishes requirements for the treatment of credit balances. It implements § 165 of the act, the scope of which has been broadened to apply to any type of credit account, not merely open-end accounts.

The act provides that a credit balance in excess of $1 created by (1) transmittal of funds in excess of the total balance due on the account, (2) rebates of unearned finance charges or insurance premiums, or (3) amounts otherwise owed to or held for the benefit of an obligor must be either credited to the consumer's account or refunded upon the consumer's request. With respect to closed-end credit, the Board believes these requirements will be applicable to such situations as the debtor paying off a loan by transmitting funds in excess of the total balance due on the account, and the early payoff of a loan entitling the debtor to a rebate of title insurance premiums and finance charges. In the Board's view, the statutory language regarding "total balance due" refers to repayment of the total outstanding balance. Thus, this provision would be inapplicable where the customer has simply paid an amount in excess of the installment payment due for that period.

The act requires the creditor to make a good faith effort to refund to the consumer any part of the credit balance remaining in the account for more than six months. When the consumer's current location is not known by the creditor, the statute contemplates that the minimum tracing requirement will include use of both the consumer's last known address and telephone number. A creditor is not required to trace the consumer when the amount of the credit balance is less than $1. If the consumer cannot be traced, the Board believes that the disposition of the money remaining in the account after six months is a matter of state law. The fact that a consumer cannot be traced through the last known address or telephone number in no way sanctions the creditor's treating the balance as income or making other disposition of it.

The Board solicits comment on its implementation of § 165 of the act and welcomes views on the application of this section to closed-end credit transactions.

Section 226.22—Determination of annual percentage rate.

This section, formerly § 226.12 of the May draft, has been significantly expanded by the incorporation of a special tolerance for irregular transactions and the temporary reinstatement of the special protection for use of faulty calculation tools. In addition, several minor editorial changes, not intended to affect the substance of the section, have been made.

Section 107(c) of the act authorizes the Board to provide a tolerance greater than ⅛ of 1 percentage point in transactions involving irregular payments. Although the regulation provides a special rule for payment irregularities, this rule is limited to several slight irregularities and has no application to the majority of complex transactions. In view of the potential difficulty of calculating an annual percentage rate in complex transactions and congressional recognition of this fact, the Board believes that a wider tolerance may be appropriate. Therefore, § 226.22(a) has been redrafted to provide a tolerance of ¼ of 1 percentage point for irregular transactions, which the Board proposes to define as those involving multiple advances, irregular payments, or irregular payment periods. The Board specifically solicits comment on the general issue of a wider tolerance for these transactions, as well as on the definition of an irregular transaction, the amount of the tolerance, and whether the allowable tolerance should vary with the size of the transaction. At this time, the Board proposes to retain the special rule in § 226.17(c)(4) along with the new tolerance, so that irregular transactions may utilize either or both of these provisions, but solicits comment on this matter as well.

The May draft would have eliminated the special protection afforded creditors for errors resulting from good faith use of faulty calculation tools, now contained in § 226.5(c) of the current regulation. The Board continues to believe that this regulatory provision will no longer be appropriate or necessary, particularly in light of the expanded defense for such errors in § 130, the civil liability provision of the act. However, several commenters expressed concern about the availability of the amended § 130 defense before April 1, 1982, and requested that a form of present § 226.5(c) remain in the regulation until that time. The Board believes that the continued availability of the special provision is appropriate and proposes to reinstate this protection by the addition of § 226.22(e) to the draft. As noted in paragraph (f)(2) of the section, the special rule would be rescinded as of April 1, 1982. The Board solicits comment on this proposal.

Section 226.23—Right of recission.

(a) *Consumer's right to rescind.* Paragraph (a), which implements § 125(a) of the act, is based on § 226.13(a) of the May proposal. It provides the right to rescind a transaction secured by the consumer's principal dwelling. As in the May draft, the right applies to any property, personal or real, used as the consumer's principal dwelling at the time the security interest is retained. However, paragraph (a)(1) differs from the earlier draft in that the statutory language "is or will be" has been reincorporated. The Board believes that this phrase may be necessary to clarify that security interests not retained at consummation of the transaction may still give rise to the right of rescission. For example, materialmen's or mechanic's liens arising by operation of law may not arise until performance has begun. The right of rescission may still be applicable in such transactions, even when the security interest has not yet been created.

Under paragraph (a)(1), any consumer whose principal dwelling is subject to a security interest may rescind. Section 226.2 defines "consumer" to include a comaker, endorser, guarantor, surety or similar person who may be obligated to repay the extension of credit. The Board believes that this definition encompasses persons who are not parties to the credit agreement but who have signed the security agreement. Therefore, a joint owner in this situation must be given the right of rescission, if the property represents that consumer's principal dwelling.

Several commenters requested further guidance regarding the effect of materialmen's liens, as well as other liens arising by operation of law, on the right of rescission. In order to give rise to the right of rescission, the security interest must be retained "in the credit transaction." A materialmen's lien obtained by a contractor who is not a party to the credit transaction, but merely receives the proceeds of the consumer's unsecured bank loan, does not create a rescindable transaction between the bank and the consumer. The security interest is in that case not a term of the *credit* transaction but is obtained by an unrelated third party. However, a security interest acquired by a contractor who is the creditor in the transaction creates a rescindable transaction, because the security interest is retained in connection with the credit extension. The same result occurs when a materialmen's lien is retained by a subcontractor of a creditor-contractor, even when the latter has waived its rights under the law. In the Board's view, the subcontractor is acting as the agent of the creditor-contractor in such cases and the security interest therefore forms part of the credit transaction. This position incorporates current Board Interpretation § 226.901.

The footnote to paragraph (a)(1), dealing with addition of a security interest to an existing obligation, has

been expanded in two ways. First, only the notice required by paragraph (b), and not new material disclosures, need be delivered in such cases. Second, the footnote specifically provides that the rescission period is triggered by delivery of the rescission notice.

Paragraph (a)(2) reflects both the existing regulation and the May draft. It provides that the consumer's written notification that the transaction has been rescinded is considered given to the creditor when mailed or filed for telegraphic transmission. Although many commenters requested that notification be considered given upon receipt by the creditor, the Board believes that the existing rule best serves the purposes of this provision. Many of these comments were prompted by a misunderstanding of the effect of this rule. The Board wishes to emphasize that the 20-day limit on the obligations in paragraph (d) runs from receipt of the notice, not the time of mailing.

Paragraph (a)(3) has been revised to clarify that the rescission period runs from the last of three events: Consummation, delivery of the rescission notice required by paragraph (b) of this section, and delivery of the material disclosures. The rescission notice and material disclosures need not be delivered at the same time. The material disclosures as defined in the footnote are intended to be exhaustive. For example, they do not include an explanation of the amount financed or information regarding the security interest. Moreover, for purposes of rescission, the material disclosures need not be accompanied by descriptors.

The last portion of paragraph (a)(3) provides for termination of an unexpired right of rescission three years from consummation or upon the transfer of the property, whichever comes first. Transfer of the property means any transfer of the consumer's entire interest. Both voluntary and involuntary transfers, including a foreclosure sale, terminate the right to rescind.

The rule in § 226.9(f)(1) of the current regulation has been added as paragraph (a)(4) to clarify that transactions in which more than one consumer's ownership interest is at risk may be rescinded by any one of the consumers involved.

(b) *Notice of right to rescind.* This paragraph has been revised in four ways. First, the proposal reinstates the requirement that creditors provide two copies of the notice. Second, the phrase "to each consumer entitled to rescind" has been added to clarify that the creditor must deliver the copies to all consumers whose ownership interest in the dwelling secures the obligation. Third, a new disclosure requirement, the date of expiration of the rescission period, has been added as paragraph (b)(5). Fourth, creditors must identify the transaction to which the right applies. This may be done, for example, by giving the date of the transaction.

The notice in Appendix G provides a model for creditors to use in complying with this requirement, although that form need not be used. The creditor may provide a separate form that a consumer may use to exercise the right of rescission or that form may be combined with the other rescission disclosures, as is done in the Board's model form. Creditors may designate an agent to receive notice from consumers.

(c) *Delay of creditor's performance.* Paragraph (c) restates § 226.9(c) of the existing regulation and § 226.13(c) of the May draft, with minor editorial changes.

(d) *Effects of rescission.* This paragraph differs from § 226.13(d) of the May draft in four respects. First, it has been divided into subparagraphs in order to more clearly delineate the obligations of the creditor and the consumer. Second, in addition to the change in format, the statutory word "tender" has been reinstated in place of "offer" because the terms may not be synonymous under state law.

Third, the paragraph has been revised to clarify that the consumer's option to tender at the location of the property or at the residence, rather than at the creditor's place of business, applies only to the tender of goods and materials. A tender of money must be made at the creditor's place of business.

Fourth, the paragraph uses the term "calendar days" in describing the time periods within which the creditor must return any money or property and reflect the security interest termination, and subsequently take back any money or property tendered by the consumer. This editorial change reflects the staff's longstanding interpretation of this provision.

Many commenters requested that the Board allow creditors to utilize offsets, escrow agreements and other similar alternative methods of complying with their reponsibilities in a rescinded transaction. However, the Board believes that, in view of the act's specificity in this regard, it would not be appropriate or necessary to provide further elaboration in this area.

Many commenters also addressed the application of paragraph (d)(2), which requires that the creditor return any money or property given by the consumer as amounts paid to third parties. In the Board's judgment, because section 125(b) of the act requires that creditors return any money or property given as earnest money, downpayments, *or otherwise,* creditors must return all monies including downpayments, application fees and fees paid to third parties. This reflects the position taken in staff interpretations of the current regulation.

(e) *Consumer's waiver of right to rescind.* The paragraph differs significantly from its counterpart in both the May draft and the existing regulation with regard to the nature of the emergency giving rise to a waiver. The emergency need no longer endanger persons or property. The consumer need only determine that the extension of credit is necessary to meet a bona fide personal financial emergency. This standard essentially mirrors that in section 125(d) of the act. The Board believes that the current regulatory implementation of that statutory provision may be unnecessarily narrow and solicits comment on this revision. While the requirements for a waiver would be eased, this provision continues to prohibit the use of preprinted forms for this purpose, in order to prevent any abuse of the waiver rule.

(f) *Exempt transactions.* The changes made in this paragraph are generally editorial and are not intended to alter the substance of the May draft.

Paragraph (f)(2) incorporates in a revised format the current position taken in Board Interpretation § 226.903 concerning the right of rescission in refinancings.

Paragraph (f)(4) corresponds to the proposed § 226.11(d), covering series of advances and series of single-payment transactions. Just as new disclosures need not be made for subsequent advances, no new rescission rights arise so long as the appropriate notice was provided at the outset of the transaction. Subsequent advances for renewal premiums addressed in Board Interpretation § 226.814 would also come within this exemption.

Paragraph (f)(5) of the May draft, which concerned subsequent subordination of a security interest, has been deleted as unnecessary because the right of rescission no longer depends on the priority status of the lien.

Section 226.24—Advertising.

Section 226.24 contains rules for advertising closed-end consumer credit. It is based on § 226.14 of the May proposal but contains several substantive and editorial revisions.

(a) *Actually available terms.* This paragraph corresponds to paragraph (a)(1) of the May draft and requires that advertisements state only those terms that the creditor is actually prepared to

offer. Several commenters suggested retaining the "will arrange" language of the current regulation so that creditors may also advertise limited or unusual credit terms. The deletion of such language is not intended to inhibit the promotion of new credit programs, but to prohibit the advertising of terms which the creditor does not actually intend to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time, but may advertise a rate that will be offered for only a limited period.

Section 226.14(a)(2) of the May draft, prohibiting inaccurate or misleading advertising, has been deleted as unnecessary. Many commenters expressed concern about this provision, which they believe is already adequately addressed in a variety of other laws.

(b) *Advertisement of rate of finance charge.* Paragraph (b) requires that advertised rates be stated in terms of an annual percentage rate. As in § 226.18(f), relating to disclosure of a variable rate, the rate increase disclosure requirement in this paragraph does not apply to any rate increase due to delinquency (including late payment), default, assumption, or transfer of collateral.

(c) *Advertisement of terms that trigger additional disclosures.* Paragraph (c)(1) sets forth the credit terms which, if used in an advertisement, require disclosure of the credit terms listed in paragraph (c)(2). Several commenters suggested that the phrase "or otherwise determinable from" be deleted from paragraph (c)(1) because they deemed it too vague a standard for determining when a trigger term has been stated. This phrase was included in the May draft to cover such promotional statements as "80% financing available" which is, in fact, indicating that a 20% downpayment is required. The Board believes that this phrase should be retained, to clarify that terms which are implicit from the advertisement trigger further disclosures.

The terms "no downpayment is required" and "no charge for credit" have been eliminated from the list of triggering terms in the new draft. These terms are not mandated by the statute.

The footnote to this paragraph reflects Board Interpretation § 226.1001, which deals with the advertisement of credit terms when all credit sales or loans are not made on the same basis. The advertisement of credit terms may be made by giving one or more examples of typical extensions of credit and stating all of the terms applicable to each example. The examples must be labeled as such and must reflect representative credit terms that are made available by the creditor to present and prospective customers.

A number of commenters suggested that paragraph (c)(2)(i), relating to downpayments, be clarified to indicate that it is applicable only to credit sale transaction. Since the term "credit sale" has now been incorporated into the definition of downpayment in the new draft of the regulation, a specific reference to credit sales appears unnecessary in this paragraph.

Paragraph (c)(2)(i) has been revised so that creditors may state either the amount or percentage of the downpayment. When a transaction involves no downpayment, creditors need not state that fact.

Paragraph (c)(2)(ii) has been revised to read "terms of repayment," as provided in the statute, instead of "number, amounts and timing of repayment." This change is designed to provide greater flexibility to creditors in making this disclosure. Repayment terms may be expressed in a variety of ways in addition to the exact repayment schedule. For example, a creditor may use a unit-cost approach in making the required disclosure, e.g., "48 monthly payments of $27.83 per $1,000 borrowed." As another example, in an advertisement for credit secured by a dwelling, when any series of payments varies because of a graduated payment feature or because of the inclusion of mortgage insurance premiums, a creditor may comply with paragraph (c)(2)(ii) of this section by stating the number and timing of payments, the amounts of the largest and smallest of those payments, and the fact that other payments will vary between those amounts. This example corresponds to § 226.14(d) of the May draft of the regulation and reflects Board Interpretation § 226.808 of the current regulation.

Several commenters argued that residential mortgage transactions should be completely exempted from the advertising restrictions, on the grounds that the annual percentage rate is difficult to compute for these transactions and that other information, such as simple interest rates, points and loan fees, is more crucial to consumers for comparison shopping purposes. In the Board's view, the evidence available does not support an exemption of this nature but further comment on this matter is welcome.

(d) *Catalogs and multiple-page advertisements.* Paragraph (d) corresponds to § 226.10(b) of the current regulation. It incorporates the requirement in current Board Interpretation § 226.1002 that the tables or schedules of terms in catalogs include all amounts up to the level of the more commonly sold higher priced property or services. In the Board's view, the remaining portion of that interpretation, regarding the method of computing disclosures and the $1,000 limit on the examples, is unnecessary and its inclusion would be contrary to the concept of simplification.

It should be noted that the May draft of § 226.14 included the disclosure requirements regarding oral responses to inquiries about the cost of credit. Since oral responses are advertisements within the meaning of § 226.2, this provision has been moved to Subpart E of the regulation.

Subpart D—Consumer Leasing

Section 226.25—Definitions.

This section incorporates the definitions in § 226.2 of the May draft that are applicable solely to leasing. Terms that may apply to other provisions of the regulation as well as Subpart D are still defined in § 226.2.

Arrange for a lease. This definition no longer requires that arranging for a lease be a transaction that occurs "regularly," as the definition of "lessor" makes such a requirement unnecessary. Otherwise, this definition is unchanged from the May draft.

Consumer lease. This definition is unchanged from the May draft except to add, for purposes of clarification, that leases which are defined as "credit sales" are not within the definition of a "consumer lease."

As stated in the commentary to the May draft, a month-to-month lease, with no penalty for cancelling before five months and with an obligation to pay only the rental and any accrued and unpaid charges, is not subject to either the credit or leasing provisions of Regulation Z. It is not a credit sale because the consumer does not agree to pay a sum substantially equivalent to, or in excess of, the aggregate value of the property and service involved. It is not a consumer lease because the original term does not exceed four months. This position is consistent with longstanding Board interpretations and is based on the statutory definitions of transactions subject to the Consumer Credit Protection Act.

May commenters objected on this position and urged the Board to extend the coverage of the regulation of these leases. The commenters pointed out that customers may, as a result of unscrupulous business practices, be misled about the true cost of these leases and deprived of important information. While the Board recognizes and shares these concerns, it continues

to believe that such leases are beyond the scope of the act. The act itself does not appear to provide an approporiate vehicle for eliminating abuses in this area and congressional action may be needed to address these concerns.

A month-to-month lease with a penalty for cancelling before five months or with an obligation to pay more than the total of the rental and accrued and unpaid charges may be a consumer lease. However, such a lease would not be a credit sale, because the consumer does not agree to pay a sum substantially equivalent to or in excess of the aggregate value of the property and services involved. It should be noted that requiring notice before termination is not a penalty for the purposes of either the "credit sale" or "consumer lease" definitions.

Lessor. This definition, like the definition of "creditor," has been altered to provide a more reliable guide for determining who has disclosure responsibilities. Under the proposed definition, if a person has extended or arranged for a lease more than 25 times in the calendar year preceding the transaction in question, that person is a lessor and must make disclosures. The Board solicits comment on whether the test is appropriate.

Realized value. This definition is unchanged from the May draft.

Total lease obligation. This definition is substantially unchanged from the definition in the current regulation. However, the proposed definition permits noncapitalized sales taxes on the monthly payments to be included in the scheduled periodic payments in calculating the "total lease obligation."

Value of the property at consummation. This definition is unchanged from the May draft.

Section 226.26—Disclosures.

Section 226.26 of the proposal contains the leasing disclosure provisions and corresponds to § 226.15 of the May draft and the current regulation. Although the proposal retains the organizational framework that appeared in the May draft, it substantively changes the content. New requirements in the May draft that would have altered leasing forms have been eliminated, because the Truth in Lending Simplication and Reform Act did not amend the consumer leasing provisions. Although the Board favors a simplified leasing regulation, it believes that further modifications should await Congressional action. Consequently, this proposal more closely resembles and clarifies the current regulation. The proposal has also been redrafted to mirror certain changes made in the closed-end credit provisions that do not require alteration of disclosure forms.

The leasing forms that appear in current Board Interpretations §§ 116.1501 and 226.1502 are incorporated, without change, in Appendix H of this proposal. The Board invites lessors to submit their consumer leasing forms and to suggest improvements to the forms in Appendix H.

(a) *Time and form of disclosures.* This paragraph corresponds to § 226.15(b) of the May draft. It no longer requires the disclosures to be grouped together and segregated from all other disclosures, because these requirements conflict with the more permissive requirements in section 122(b) of the act. Moreover, the deleted provisions would have required burdensome lease form alterations. The proposal, however, requires the disclosures to be written clearly and conspicuously, as mandated by § 182 of the act.

(b) *Basis of disclosures and use of estimates.* When the lessor lacks the information needed to make accurate disclosures, it must make disclosures based on the best information reasonably available. For example, when determining the estimated value of a leased vehicle at the end of the term, the lessor may use the "blue book" value as the best information reasonably available. In the alternative, the lessor may rely on its objective experience with local used motor vehicle markets and long-term price trends, if that experience better approximates the actual value of the vehicle at the end of the lease term.

Section 226.15(c)(2) in the May draft permitted a lessor to understate the estimated value of the leased property, provided it returned any excess of realized value over estimated value to the consumer at the end of the lease term. This provision has been deleted because it would have required lessors to alter their lease forms. The substance of current § 226.6(f), which provides that a lessor may understate the estimated value only in a purchase option lease, has been reinstated.

(c) *Multiple lessors multiple consumers.* This paragraph corresponds to § 226.15(a) (1) and (2) of the May draft but eliminates the general statements that a lessor must provide disclosures to a consumer. The Board believes that this material is unnecessary and has revised the paragraph to address only multiple-consumer and multiple-lessor transactions, where specific guidance may still be needed. In the first sentence, the word "need" replaces the word "shall" to indicate that more than one lessor is permitted to make disclosures when a lease involves multiple lessors. Only one complete set of disclosures need be given.

(d) *Effect of subsequent events.* This proposal eliminates the provision in the May draft that required new disclosures before consummation if the original disclosures were rendered inaccurate by an event occurring after delivery. For purposes of this paragraph, the act of mailing the disclosures to the consumer constitutes "delivery."

(e) *Content of disclosures.* As in the May draft, the lessor need make only those disclosures that apply to its leasing practices. For example, if a lessor does not secure the performance of a lease by taking a security interest in the consumer's property, the lessor is not required to disclose a security interest under paragraph (e)(12) of this section.

Paragragh (e)(1) clarifies that the consumer to whom disclosures are made is the only consumer whose identity need be disclosed.

Paragraph (e)(4) is substantially unchanged from the May draft. Some examples of payments that are disclosed under this provision are a refundable security deposit, advance payment, capitalized cost reduction, and trade-in allowance. This paragraph retains the May draft provision requiring a "brief description" of the payments. The phrase "brief description" replaces the current regulatory phrase "appropriately identified," although no substantive change is intended.

Paragraphs (e)(6) and (e)(7) are modified to permit lessors to retain their current disclosure forms. The paragraphs now permit, but do not require, the exclusion of charges that were previously disclosed. Lessors who currently include previously disclosed charges in these amounts may continue to do so.

The May draft of paragraphs (e)(10) and (e)(12) required lessors to alter their disclosure forms. This proposal modifies those paragraphs to eliminate the need for any alteration of forms. Paragraph (e)(10) no longer requires a brief description of any maintenance or service contract, while paragraph (e)(12) eliminates disclosure of a security interest in after-acquired property.

Paragraph (e)(12) requires the disclosure of a security interest as defined in § 226.2 and the accompanying explanatory material to that section. This term does not include certain incidental items such as insurance proceeds, unearned insurance premiums, or accessions to property.

The May draft of paragraph (e)(13) added excessive wear or use charges to the list of required disclosures for

default, delinquency or late payment. Excessive wear or use charges have been deleted from the paragraph, because their disclosure might require lessors to alter their forms. The Board solicits comments on whether excessive wear or use charges are in the category of default charges and whether the inclusion of such charges would alter lease forms. As stated in official staff interpretation FC–0156, paragraph (e)(13) does not require the disclosure of accrued lease charges in a "simple interest" lease when a periodic payment is deferred. This proposal also retains the May draft exclusion of deferred extension charges from the disclosure requirements of paragraph (e)(13). The Board solicits comments on whether the exclusion of these charges is appropriate.

The remaining provisions in paragraph (e) are substantially similar to their counterparts in the May proposal.

(f) *Special disclosures concerning consumer's liability on termination of lease.* Proposed paragraph (f) corresponds to §§ 226.15(b)(13), (14), and (15) of the current regulation, and appears as a separate disclosure provision to emphasize that the disclosures relate only to open-end leases. An open-end lease imposes liability on a consumer at the end of the lease term for the difference between the realized value of the leased property determined at that time and the estimated value disclosed at consummation. The term "realized value" is defined in § 226.25 of the proposal.

Paragraph (f) eliminates two disclosure requirements that appeared in the May draft because they required a change in lessors' forms. Lessors need not disclose whether an appraisal will be based on the wholesale or retail value of the leased property, nor that an appraisal is final and binding only if obtained within a reasonable time. As proposed, this paragraph returns to the substantive requirements of the current regulation.

(g) *Renegotiations requiring new disclosures.* Proposed § 226.26(g) sets forth a new rule for determining when a renegotiation occurs. It states that new disclosures are required only when an existing consumer lease is satisfied and replaced by a new consumer lease.

Paragraph (g) substantially alters the concept of renegotiation that was proposed in the May draft. Under the earlier proposal, any change of a term originally disclosed was considered a renegotiation unless one of several exceptions applied. Commenters criticized the rule as unnecessarily broad, particularly in its coverage of deferred payments and payment schedule changes that result from the consumer's default.

The renegotiation concept is a regulatory creation; it is not addressed in the statute. The Board believes that the current revision of the regulation presents a unique opportunity to thoroughly reexamine this approach and explore alternatives.

The Board is proposing this standard as a simpler and more meaningful rule for determining when new disclosures must be given. It believes that this rule defines more precisely the situations that are analogous to new consumer lease transactions and thus require comparable treatment. Moreover, this approach parallels the revised refinancing provision in § 226.20(a) for closed-end credit. If the parties to a consumer lease agree to change the original terms by creating a new lease that replaces the old lease, new disclosures must be given reflecting the terms of the new lease. An assumption of the lease by a consumer who was not a party to the original lease is not a renegotiation. If terms are changed without extinguishing the existing lease, no disclosures are required under this proposal. For example, if the parties agree to defer one or more payments, no Regulation Z lease disclosure responsibilities arise, as long as the existing lease has not been satisfied and replaced.

The Board solicits comment on whether this standard is workable and whether it would include in and exclude from the category of renegotiations the appropriate situations. The proposal expressly retains the renegotiation exception permitting the substitution or addition of items in a multiple-item lease. The Board contemplates that the substitution of property in a single-item lease, such as an automobile lease, constitutes a renegotiation. The Board is particularly interested in knowing the impact of the proposed rule on certain common changes in terms. These changes include deferrals of payments, the addition or renewal of optional insurance, an extension of the lease term with no other changed terms, a change in collateral requirements, a change in late charges, post-default changes, agreements approved by a court, and an informal oral agreement between the lessor and consumer.

The reference to "an existing lease" includes leases subject to the present Regulation Z as well as those subject to the revised regulation.

(h) *Extensions.* Proposed § 226.26(h) is a new paragraph and corresponds to §§ 226.15(g)(2)(iv) and (g)(3) of the May draft. It requires lessors that extend a consumer lease beyond the original term to abide by the presumptions and duties in section 183(a) of the act.

The extension provisions that appear in the current regulation, the May proposal, and this proposal are regulatory creations. The act does not specifically address the effect of an extension on the lessor's section 183(a) statutory duties. The Board solicits comment on whether it is appropriate to clarify those duties when a lease is extended.

If a lease is extended for one month or less, the lessor must determine the consumer's end-of-term liability on the basis of the original estimated value of the leased property. If a lease is extended for one month or more, on a month-to-month basis or otherwise, the lessor must still comply with statutory section 183(a) duties. Moreover, to clarify the May draft, the proposal requires the lessor to redetermine the estimated value of the leased property when the extension terminates and the property is returned. The estimated value should be reduced by an amount reflecting the depreciation that occurred over the extended time period.

The lessor may use any reasonable method to determine the depreciation that results during an extension; it need not engage in complex recomputations. A new footnote provides a simplified method that the lessor may use to determine the reduced estimated value of the property. Assuming that a portion of each periodic payment reflects the depreciation of the leased property that correlates with the original estimated value, the footnote permits the lessor to subtract the depreciation portion of each periodic payment made during the extension from the original estimated value. If the leased property appreciates instead, this provision is inapplicable. Lastly, if a lessor prefers, it may treat an extension as a renegotiation requiring new disclosures.

Section 226.27—Advertising.

This section is substantially unchanged from § 226.16 in the May draft.

(a) *Actually available terms.* The May draft permitted an advertisement to state only those terms that a lessor "generally arranges or offers." A number of comments were received suggesting that the provision would prohibit lessors from advertising new terms. To prevent such misunderstanding, the paragraph has been amended. The new proposal would require that an advertisement which states specific consumer lease terms state only those terms that the lessor "actually arranges or offers." The

Board believes that this language is flexible enough to permit the offering of special programs and new terms while at the same time prohibiting the "bait and switch" practices that paragraph (a) is intended to prevent.

(b) *Advertisement of terms that require additional disclosures.* This paragraph is substantively the same as § 226.16(b) in the May draft.

(c) *Multiple-item leases; merchandise tags.* This paragraph is the same as § 226.16(c) in the May draft, except that it no longer requires that the merchandise tag "clearly" refer to a sign or display, or that the sign or display be "prominently" posted. The requirements of clarity and prominence were vague and might have caused unnecessary difficulty in compliance.

(d) *Catalogs and multiple-page advertisements.* This paragraph is substantively the same as § 226.16(d) in the May draft.

Subpart E—Miscellaneous

Section 226.28—Record retention.

The general rule in paragraph (a) states that records must be retained for a period of two years from the date disclosures must be given. Editorial changes were made in order to more clearly delineate a creditor's responsibilities in this area. The time period is the same for creditors and lessors since the Board is not persuaded of any operational problems with the present rule.

The language regarding the retention of advertising materials has been deleted from paragraph (a) to reflect the fact that advertising is not covered by the record retention provisions. This is in accord with present regulatory requirements, and many commenters objected to the May proposal's coverage of advertising.

This proposal requires, as did the May proposal, that evidence of compliance, "including information sufficient to reconstruct the required disclosure," be maintained. Some commenters expressed concern about this language, but it is not intended to require more information to be retained than under the present regulation, which simply requires that evidence of compliance be maintained. For example, if a creditor normally keeps computer programs, this information would satisfy the record retention requirements; a creditor, however, is not *required* to keep them. As under the present regulation, creditors need not retain each periodic statement.

The word "relevant" has been added to paragraph (c) regarding the inspection of records. This change continues the present regulation's language and is intended to alleviate the concern of some commenters who believed that the May proposal had expanded agencies' rights to inspect information.

Section 226.29—Use of annual percentage rate in oral disclosures.

This section incorporates §§ 226.10(d) and 226.14(f) from the May proposal. It requires a statement of the annual percentage rate in responding to oral inquiries about the cost of credit.

Section 226.30—Spanish language disclosures.

The language in the May proposal remains basically unchanged. Disclosures must be made in English, except in Puerto Rico, where creditors may disclose in Spanish. If foreign language disclosures are required by state, federal, or local law, they would not be inconsistent with disclosures under this regulation and may be given in addition to English disclosures. Under the regulation, however, English disclosures must be made clearly and conspicuously.

Section 226.31—Effect on state laws.

(a) *Inconsistent disclosure requirements.* The Board has substantially revised this section and specifically solicits comment on its provisions.

Proposed paragraph (a)(1), formerly paragraph (a) of the May proposal, includes a standard for the evaluation of inconsistent state and federal disclosure requirements. Under this provision, state law is inconsistent with, and therefore preempted by, federal law if a creditor or lessor, in complying with state law, violates federal law. State law is preempted only to the extent of the inconsistency. So long as a creditor or lessor can comply with state law without violating federal law, state law is not inconsistent. This general rule applies to Subpart B (open-end credit), Subpart C (closed-end credit), and Subpart D (consumer leasing).

This provision differs from the May proposal, which contained no criteria for the determination of inconsistency. A number of commenters requested the inclusion of standards to serve as an aid to compliance with this paragraph and as a guide to the factors the Board would use in making a preemption determination. In response to these comments, the Board has revised the paragraph to include the standard outlined above. It is intended to be used by creditors and lessors before any Board determination of inconsistency is made. In addition, if such a determination is requested, the Board would use this standard in reaching its decision. The Board believes that providing this standard will facilitate creditors' making independent preemption decisions.

Paragraph (a)(2) reflects the rule for fair credit billing and consumer leasing provisions. As in the previous proposal, state law that is more protective of the consumer in these areas is not inconsistent.

The only revision made to the "more protective" provision of proposed paragraph (a)(2) was the inclusion of § 226.21 in the list of applicable paragraphs. This paragraph, dealing with the treatment of credit balances in close-end credit, is included here as an additional fair credit billing reference.

Proposed paragraph (a) prohibits the disclosure of any state requirement that is inconsistent and therefore preempted. If a creditor chooses to give a state-required disclosure that is not preempted, the disclosures required under this regulation must be made in conformance with its clear and conspicuous standard.

(b) *Equivalent disclosure requirements.* Paragraph (b) deals with state disclosure requirements that are substantially similar to federal disclosures. In the case of such equivalent requirements, the state disclosure may be made in place of the federal. As in the May proposal, the Board has provided no specific criteria for determining substantial similarity. Because of the unique circumstances and the potential for variety among the states' requirements, this paragraph proposes that standards be determined on a case-by-case basis.

This paragraph contains an exception for the finance charge and annual percentage rate disclosures. As interpreted by the Board, section 122(a) of the act requires that the specific terms "finance charge" and "annual percentage rate" be used, state law notwithstanding, and additionally, that they be disclosed more conspicuously than other required information.

(c) *Request for determination.* This paragraph establishes the procedures for seeking a Board determination on inconsistent and equivalent disclosure requirement. The procedures outlined in this provision have been revised by the addition of paragraph (c)(4). This proposal responds to several commenters that requested a transition period after a Board determination so that necessary changes in forms and procedures could be made. The effective date proposed here, October 1, provides a uniform date, while allowing at least six months in each case for complying

with a Board determination. This is based on § 105 of the act.

Appendices A–I

Appendix A, which outlines the procedures for state exemptions, has been moved from § 226.20 of the May proposal because it primarily addresses administrative matters. The section has been revised to include a paragraph about the effective date of exemption determinations. Section II states that any determination as to the exemption of a class of transactions shall be effective on October 1. This provision is based on § 105 of the act which allows creditors at least six months to adjust their forms to comply with amendments to the regulation.

Several commenters requested that the status of current exemptions under the new regulation be clarified. The Board envisions that the existing exemptions under the current statute and regulation will be automatically revoked on April 1, 1982, when the new statute become effective. Since the new regulation must be in effect by April 1, 1981, those states currently having exemptions will have at least one year during which to amend their statutes and regulations, apply for exemptions, and receive new exemption determinations from the Board.

The standard for exemption contained in Section I is unchanged from paragraph (a) of the May proposal and provides that an exemption will be granted if state law is "substantially similar" to the requirements of federal law, or, for credit billing and leasing transaction, if state law affords greater protection to the consumer than federal law. As the supplements to the current Regulation Z indicate, the "substantially similar" standard has been interpreted as requiring state provisions to be generally the same as federal provisions. The standards for exemptions are set forth in Supplements II (credit transactions), IV (credit care issuance and liability), V (credit billing) and VI (consumer leases).

Appendix B deals with the issuance of official staff interpretations. Since it relates to administrative matters, it has been moved from § 226.21 of the May proposal.

In Section I, which replaces paragraph (a) of the May proposal, the Statement that "a creditor or lessor who acts in conformity with an official staff interpretation, whether the creditor or lessor actually knows of the interpretation or not, shall not be held liable" has been deleted. Instead, § 130(f) of the act, which affords certain protection from civil liability, has simply been cited. Because the civil liability provisions of the act have not been implemented in the regulation, the Board believes that it would be inappropriate to interpret the applicability of the civil liability provisions.

Proposed Section II, which sets forth the procedure for issuing official staff interpretations, has been substantially revised. The proposal provides that official staff interpretations be published for comment in the **Federal Register**. After the comment period has ended, official staff interpretations will be republished in the **Federal Register** and will become effective at that time. This procedure differs from that in the May proposal and in the current regulation, which provide that official staff interpretations published in the **Federal Register** will become effective 30 days after publication unless a request for public comment is received and granted. The Board hopes to expedite the official staff interpretation process by immediately publishing interpretations for comment, rather than waiting for a request for public comment, suspending the effective date, and republishing for comment. Experience indicates that a request for comment is received in most cases, necessitating suspension of the effective date.

Several commenters were concerned with paragraph (d) of the May proposal, which is now Section III. This provision exempts forms required or sanctioned by a government agency from the general prohibition of issuing staff interpretations approving creditors' forms. This treatment is available to government agencies in order to implement section 113(a) of the act which requires government agencies to consult with the Board regarding their forms.

Paragraph (c) of the May proposal, which explained the procedures for issuing unofficial staff interpretations, has been deleted. In the Board's opinion, the regulation should reflect only the procedures for issuing official staff interpretations because they are founded on the statute. While Section II establishes the procedure for issuing interpretations that are to be recognized as providing protection from civil liability under § 130(f) of the statute, the provisions on unofficial staff interpretations in the May proposal simply explained an internal Board procedure. This procedure may no longer prove necessary in light of the Truth in Lending simplification effort and the Board's intention to issue, and update periodically, a commentary to the regulation in lieu of staff letters.

Appendix C incorporates Board Interpretation § 226.709 with editorial changes that are not intended to be substantive in nature.

Appendix D incorporates the substance of current Board Interpretation § 226.813. That interpretation provides a special procedure that creditors may use at their option in calculating and disclosing the terms of multiple-advance transactions when the amounts and timing of advances may be unknown at consummation of the transaction. In a revised format, this appendix utilizes a similar mathematical basis as the interpretation, but has been redrafted for greater clarity. The format reflects the approach taken in § 226.17(c)(6) of this proposal, which permits creditors to provide separate or combined disclosures for the construction period and for the permanent financing, if any.

The appendix would now be limited specifically to construction loans. Currently, all multiple-advance transactions may take advantage of Board Interpretation § 226.813. In view of the fact that its assumptions, formulas, and examples are based only on the typical construction loan, the Board believes that its use for other types of transactions, where such assumptions may not be valid, is inappropriate. Therefore, the Board proposes to limit this appendix to those multiple-advance construction loans which are either payable in a single sum at close of the construction period or converted to permanent financing by the same creditor at that time. The Board solicts comment on this proposal.

Appendix E incorporates in its entirety Appendix B of the May proposal.

Appendices F, G, and H contain model forms and clauses for use in open-end and closed-end credit transactions and leasing transactions. Amended section 105 of the act requires the Board to publish such models to facilitate compliance by creditors and to aid consumers in understanding their transactions. Use of these models is not mandatory; however, as provided in section 105(b), creditors who use them properly will be deemed to be in compliance with the requirements of the regulation. It is intended that creditors have some flexibility in adapting the models to their own particular specifications. Creditors may delete inapplicable information in a number of ways, such as crossing out or whiting out inapplicable information, or by circling the correct information. Creditors may make deletions and rearrange the format, provided the substance, clarity and meaningful sequence of the disclosures is not affected. Any changes beyond very

minor revisions such as those described may deprive creditors of the protection provided in the statute for the use of model forms.

The phrases in brackets are given as alternatives and may be changed to suit the specific terms of the transaction. For instance, the disclosure of the later charge in §§ G(1) and G(2) states that when a payment is late, "I will be charged ($) (% of the payment)." The creditor would choose which type of late charge is appropriate and would make the necessary changes. Another example is the disclosure of prepayment consequences. The word "not" in either sentence could be crossed out or circled, as appropriate.

The Board believes that the models would satisfy the requirements of state "plain-English" laws. However, comment is solicited on any potential problems which may arise in the use of the models for transactions subject to such laws.

Comment is solicited on all aspects of these model forms and clauses, including design, content, and usefulness. If additional models should be provided, suggestions will be welcome.

Appendix F sets forth the model disclosure notices and clauses for open-end credit transactions. Four areas are covered by these models: (1) Balance computation method, § F(1); (2) billing error rights, §§ F(2) and F(3); (3) liability for unauthorized use, § F(4); and (4) right to rescind, §§ F(5) through F(7). Several changes in organization and language have been made in the forms in an attempt to make the disclosures easier to read and understand.

The models for the disclosure of billing error rights, §§ F(2) and F(3), have been reorganized and the phrase "disputed amount" has been changed to "questioned amount." No substantive change is intended by these revisions.

In § F(4), the word "card" was substituted for "device" in the bracketed phrase in the first sentence. This change is to clarify that the liability provision applies only to credit cards. The words "and telephone number" have been deleted from the second bracketed phrase in the second sentence, to conform the model notice to a corresponding change in § 226.12(b)(2).

Section F(7) is new. It provides a notice of the right to rescind which may be used when the credit limit on an open-end account secured by the consumer's dwelling is being increased.

Appendix G sets forth models and samples for closed-end transactions. There are two models for the basic closed-end credit transaction, § G(1) which contains sale disclosures and § G(2) which contains loan disclosures. These sections are identical except for disclosure of the total sale price which applies only to credit sale transactions. These models were published as one form in § A(7) of the May draft. Items not generally applicable to all transactions are marked by dotted lines. The descriptive phrases that accompany the required terminology are suggested language only; alternative phrases may be used, so long as they convey the same meaning.

It is anticipated that the last category in the payment schedule disclosure, "when payments are due," could be completed at least three different ways: dates alone (Jan. 1, Feb. 10, March 20); periods alone (monthly beginning March 1); or a combination of the two (quarterly on Jan. 15, April 15, July 15, and Oct. 15).

The insurance provisions may appear with the other disclosures, as shown on the model, or they may appear elsewhere in the contract documents. The Board contemplates that the premium disclosures for the credit life, credit life and disability, and property insurance be either the cost for the entire term of the obligation or the unit cost.

The model form for the explanation of the amount financed, which appears as § G(3), differs significantly from its counterpart in § A(8) of the May draft. The Board believes that creditors should be given a considerable amount of flexibility in order to facilitate compliance with the regulation. The Board also believes that some precision is necessary and appropriate, both to provide guidance to creditors and to prevent unnecessary confusion to consumers.

The Board proposes to apply three specific guidelines and requests comment on each of them. First, the categories shown must be mutually exclusive. For example, any amounts included in the prepaid finance charge (such as a credit report fee paid to a third party in a nonrealty transaction) cannot be listed as an amount paid to a third party. Second, the model does not require the amounts to be shown in mathematical order or progression. Third, the Board proposes the creation of one category of fees which need not include an identification of an individual third-party payee. Amounts paid to government entities or public officials may be described merely as fees to "public officials" or by similar language. This is in contrast to the general requirement that the name of the party to whom amounts are being paid must be identified specifically and the amount itemized accordingly.

The model form which appears as § G(4) is new and combines certain disclosures required by the Real Estate Settlement Procedures Act (RESPA) with the explanation of the amount financed under the Truth in Lending Act. This model has been designed for creditors subject to the special early disclosure rule in § 226.19(g), which requires creditors subject to RESPA and Truth in Lending to make the disclosures required under both statutes within three business days of receiving a consumer's written application. This form has been designed to simplify these disclosures for creditors by combining in one form the good faith estimates of settlement costs required under Regulation X, which implements RESPA, and the explanation of the amount financed required under Regulation Z. Creditors should look to § 3500.7 of Regulation X to determine what settlement statement numbers and what settlement services to disclose, and to § 226.18(b) to determine whether to list a settlement service as a prepaid finance charge, a charge included in the amount financed, or a charge paid in cash. The form is only a proposal and has not been officially approved by the Department of Housing and Urban Development. The Board solicits comment on the usefulness of this model form.

The paragraph beside the asterisk describes the providers of settlement services. If a creditor requires a consumer to use a specific provider of services, the creditor must place an asterisk beside the settlement service listed at the top of the form and disclose the information required in this paragraph. A space for the description of the services has been omitted from this paragraph although it is required under RESPA. This has been done on the assumption that the creditor will fully describe the services provided at the top of the form. If the creditor does not do so, a space must be provided in the paragraph below for describing the services. For instance, if a creditor discloses attorney's fees as one of the settlement services, it must list at the top of the form what services are included, such as document preparation services or a title search. When this is not done, the creditor must list document preparation services and title search below. Sample III illustrates the proper disclosure of required services by designated providers.

The Board wishes to point out that use of this form is entirely optional and creditors may continue to provide RESPA disclosures and Truth in Lending disclosures separately. If this combined disclosure form is used, however,

creditors may not state the cost of services in terms of ranges of amounts. Although ranges are permitted under RESPA, they are not permitted under Truth in Lending. The Board believes that in order to provide a meaningful combined disclosure statement to consumers, costs must be stated as a single estimated amount, rather than as a range of amounts.

Appendix G contains three samples which illustrate how a specific creditor might actually fill out one of the model forms. Each of the samples is based on a specific transaction and illustrates the adaptation of a model form to a particular sale or loan. The samples illustrate permissible alterations in the model forms, including deletion of information that is not applicable to the individual transaction. As long as the required Truth in Lending information for a specific transaction is disclosed consistent with § 226.17(b), creditors may adapt the model forms to their own use in the manner best suited to their procedures. The Board solicits comment on the usefulness of the samples and on suggestions for additional samples to be included with the final regulation.

Sample I is for an automobile credit sale involving precomputed interest, with credit life insurance and filing fees financed by the creditor. This example is based on the model credit sale form in § G(1), but several disclosures have been deleted. The information regarding the consumer's right to receive an explanation of the amount financed has been omitted because it is assumed that the creditor automatically furnishes the explanation in all cases. Unnecessary portions of the payment schedule and the non-filing and property insurance information have been eliminated, as well as the information regarding assumptions, which is required only in residential mortgage transactions. Where alternatives are included in the model disclosure form, such as in the late charge, security interest, and prepayment disclosures, the appropriate disclosure has been circled and the inapplicable alternative crossed out. The dots surrounding the insurance information and the acknowledgment of receipt have been deleted since their only purpose in the model disclosure form is to indicate the optional nature of these disclosures.

The explanation of the amount financed in Sample I is based on the model form in § G(3). In this example, the amount paid on the consumer's account equals $6000, while the filing fee and the credit life insurance premium represent the amounts paid to others on the consumer's behalf. Since this transaction involves no amounts given to the consumer directly or paid to another creditor, these items may be marked N/A or O on the form. The prepaid finance charge of $25 equals the amount paid for the credit form.

Sample II, which assumes a $5,000 amount financed, is based on the model loan disclosure in § G(2). No amount financed explanation is provided because the consumer has elected not to receive this information. Since this is an unsecured obligation, the security interest information has been crossed out. The inapplicable information in the late charge and prepayment disclosures has been deleted, as has the acknowledgment of receipt.

Sample III is for a mortgage transaction subject to RESPA and is based on the model loan form in § G(2). The transaction is a $50,000 loan at a 14 percent simple interest rate for 30 years. A sample form based on § G(4), combining RESPA and Truth in Lending disclosures, is also included in Sample III. When the creditor uses the combined form, the explanation of the amount financed would automatically be furnished to the consumer and the creditor may delegate the information on the disclosure statement regarding the consumer's right to receive the explanation. Since the sample is based on a simple interest rate transaction, the first sentence in the prepayment disclosure relating to rebates has been deleted. However, if the transaction called for both rebates and penalties in the event of prepayment, both sentences, reflecting the appropriate information, would be necessary.

Other inapplicable information has also been deleted, such as the property insurance disclosure and one of the late charge disclosure alternatives. In addition, clauses describing the property to which the security interest attaches have been deleted and alternative language substituted. The phrase "the property being purchased" is used, since it is more appropriate than "goods" for a mortgage transaction.

The explanation of the amount financed categorizes each settlement cost in the transaction as either a prepaid finance charge, a charge included in the amount financed, or a charge paid in cash. The categorization in the sample form is based on § 226.4 of Regulation Z. Since the settlement fee is included as a prepaid finance charge in the sample, it is assumed that this fee covers only the cost of conducting the closing, and not other services, such as document preparation, that would be excluded from the finance charge under § 226.4(b). The services grouped under attorney's fees are all excluded from the finance charge under § 226.4(b) and are categorized as charges paid in cash. If other charges were included as part of the attorney's fees, they would be prepaid finance charges, which must be listed separately in the setlement service column and included in the prepaid finance charge column. As the asterisk indicates, the attorney's services must be furnished by a designated provider. Therefore, further information is provided in the paragraph below. These services need not be described further in that place because they are listed individually above.

The sample mortgage form is based on a relatively simple transaction in order to focus attention on the use of model form § G(4). While transactions with varying payment streams may increase the complexity of the disclosures, this fact should not affect the combined amount financed explanation and RESPA disclosure contained in § G(4). The Board solicits comment, however, on whether further samples for mortgage transactions with complex payment schedules would be useful.

Appendix H contains model disclosures for leasing transactions. The leasing forms that appear in current Board interpretations to Regulation Z are reprinted, without change, in §§ H(1), H(2), and H(3). The open-end or finance vehicle lease disclosure statement that appears in present Board Interpretation § 226.1501 is redesignated § H(1) in the proposal; the closed-end or net vehicle lease and the furniture lease disclosure statements in present Board Interpretation §§ 226.1502 and 226.1503 have been redesignated §§ H(2) and H(3), respectively.

These forms are based on a monthly periodic payment. Lessors that contemplate a weekly payment schedule should modify the forms by replacing the word "monthly" with the word "weekly," as applicable.

Appendix I provides a list that indicates the appropriate federal enforcement agency to be contacted for information regarding compliance with this regulation.

In consideration of the foregoing and pursuant to the authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604, as amended), the Board proposes to issue a revised Regulation Z (12 CFR Part 226) as follows:

PART 226—TRUTH IN LENDING

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Sec.

226.1 Authority, purpose, coverage, organization, penalties and liabilities.
226.2 Definitions and rules of construction.
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Subpart B—Open-End Credit

Sec.

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226.17 General disclosure requirements.
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Subpart D—Consumer Leasing

226.25 Definitions.
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Subpart E—Miscellaneous

226.28 Record retention.
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Appendix A: State Exemptions
Appendix B: Issuance of Staff Interpretations
Appendix C: Provisions Applicable to Card Issuers that Bill Consumers on a Transaction-by-Transaction Basis
Appendix D: Multiple-Advance Construction Loans
Appendix E: Annual Percentage Rate Computations for Certain Open-End Credit Plans
Appendix F: Open-End Model Disclosure Forms and Clauses
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Appendix H: Leasing Model Forms
Appendix I: Federal Enforcement Agencies

Authority: Sec. 105, Truth in Lending Act (15 U.S.C. 1604, as amended).

Subpart A—General

§ 226.1 Authority, purpose, coverage, organization, penalties and liabilities.

(a) *Authority.* This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts, which are contained in Title I of the Consumer Credit Protection Act, as amended (Title 15, sections 1601 through 1667 of the United States Code).

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit and consumer leases by requiring disclosures about the terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit or consumer leases.

(c) *Coverage.* (1) In general, the credit provisions contained in Subparts B and C of this regulation apply to each individual or business that offers to extend credit when four conditions are met: (i) The credit is offered to consumers; (ii) the offering of credit is done regularly; (iii) the credit is subject to a finance charge or is repayable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes. If a credit card is involved, however, certain provisions will apply even if the credit is not subject to a finance charge, or is not repayable under a written agreement in more than four installments, or if the credit card is to be used for business purposes.

(2) The leasing provisions of Subpart D generally apply to each individual or business that offers to lease or arranges for the lease of property when five conditions are met: (i) The leases are offered to or arranged for consumers; (ii) the offering or arranging of leases is done regularly; (iii) the leases are of personal property; (iv) the lease term is for more than four months; and (v) the leases are primarily for personal, family, or household purposes.

(d) *Organization.* The regulation is divided into five subparts and nine appendices as follows:

(1) Subpart A contains general information. It sets forth: (i) The basis, purpose, coverage, and organization of the regulation; (ii) the definitions of basic terms; (iii) the transactions that are exempted from coverage; and (iv) the method of determining the finance charge for consumer credit obligations.

(2) Subpart B contains the rules for open-end credit. It requires that initial and periodic statement disclosures be provided. It also describes special rules that apply to credit card transactions, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising rules.

(3) Subpart C contains closed-end credit disclosures, annual percentage rate calculations, rescission requirements, and advertising rules.

(4) Subpart D contains consumer leasing disclosure requirements and advertising rules.

(5) Subpart E contains rules on oral disclosures, Spanish language disclosure in Puerto Rico, record retention, and preemption of inconsistent state laws.

(6) There are also nine appendices. Three contain model disclosure forms and clauses for credit and lease transactions; others contain rules for computing annual percentage rates, procedures for state exemptions and staff interpretations, and special rules for certain open-end credit disclosures.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 130, 131, 134, and 185 contain the liability provisions for failing to comply with the requirements of the act and the regulation.

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* For the purposes of this regulation, the following definitions apply:

"*Advertisement*" means a commercial message in any medium that is designed to promote, directly or indirectly, any credit or lease transaction.

"*Arranger of credit*" means a person who offers more than 25 times in a year (or more than 5 times in a year for transactions secured by a dwelling) consumer credit to be extended by another person if:

(1) A finance charge may be imposed for that credit, or the credit is payable by written agreement in more than 4 installments (not including a downpayment); and

(2) The person extending the credit is not a creditor.

"*Billing cycle*" or "*cycle*" means the interval between the days or dates of regular periodic statements. These intervals shall be no longer than a quarter of a year. They shall be equal and may be considered equal unless the number of days in a cycle varies more than 4 days from the regular day or date.

"*Board*" means the Board of Governors of the Federal Reserve System.

"*Business day*" means a day on which a creditor's offices are open to the public for carrying on substantially all of its business functions.

"*Cardholder*" means a natural person to whom a credit card is issued upon the request or application of that person for consumer credit purposes, or a natural person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person. For the purposes of §§ 226.12 (a) and (b) of Subpart B, "cardholder" also

includes any person to whom a credit card is issued upon the request or application of that person for any purpose, including business, commercial, or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

"Card issuer" means a person that issues a credit card or that person's agent with respect to the card.

"Cash price" means the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. The term includes charges imposed by a creditor equally on cash and credit customers. It may include the price of optional accesories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

"Closed-end credit" means consumer credit other than "open-end credit" as defined later in this section.

"Consumer" means a cardholder or a natural person to whom consumer credit or a consumer lease is offered, and it includes a natural person acting as a comaker, endorser, guarantor, surety or similar person that may be obligated to repay the extension of credit or the lease obligation.

"Consumer credit" means credit extended or offered to a consumer primarily for personal, family, or household purposes.

"Consummation" means the time that a consumer becomes contractually obligated on a credit or lease transaction.

"Credit" means the right to defer payment of debt or to incur debt and defer its payment.

"Credit card" means any card, plate, coupon book, or other device that may be used from time to time to obtain credit.

"Creditor" means:

(1) A person (i) who extends consumer credit more than 25 times in a year (or more than 5 times in a year for transactions secured by a dwelling), if the credit may be subject to a finance charge or is payable by written agreement in more than 4 installments (not including a downpayment), and (ii) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract;

(2) An arranger of credit;

(3) For purposes of §§ 226.4(f), 226.9(d), and 226.12(e) of Subpart B, a person that honors a credit card; or

(4) For purposes of Subart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments; or

(5) For purposes of Subparts B and C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

"Credit sale" means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

(1) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the aggregate value of the property and services involved; and

(2) Will become or has the option to become, for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

"Downpayment" means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment and need not be reflected in the amount financed and payment schedule disclosed under § 226.18, if it is payable not later than the due date of the second otherwise regularly-scheduled payment and is not subject to a finance charge.

"Dwelling" means a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes individual condominium units, cooperative units, mobile homes, and trailers, if used as a residence.

"Open-end credit" means consumer credit extended by a creditor on an account under a plan in which:

(1) The creditor reasonably contemplates repeated transactions;

(2) The consumer has the privilege of paying the balance in full at any time, without penalty when payment is made in full;

(3) A finance charge may be imposed by the creditor from time to time on an outstanding unpaid balance; and

(4) The amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the creditor, is replenished to the extent that the consumer repays any outstanding balance.

"Periodic rate" means a percentage rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

"Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

"Personal property" means property that is not real property under the law of the state in which it is located at the time it is offered or made available for lease.

"Prepaid finance charge" means any finance charge paid before or at consummation of a transaction or withheld from the principal amount of the credit at any time.

"Regular price" means:

(1) The tagged, posted, or advertised price; or

(2) The price charged when payment is made by use of an open-end credit card account if (i) no price is tagged, posted, or advertised, or (ii) two prices are tagged, posted or advertised, one of which is charged when payment is made by use of an open-end credit card account and the other when payment is by other means.

"Residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's dwelling to finance the acquisition or initial construction of that dwelling.

"Security interest" or *"security"* means an interest in property that secures performance of a consumer credit or lease obligation and that is recognized by and enforceable under state or federal law. It does not include incidental interests such as an interest in proceeds, accessions, additions, fixtures, insurance proceeds or premium rebates, nor does it include the status as loss payee or beneficiary on an insurance policy. For purposes of disclosure under §§ 226.6, 226.18, and 226.26, the term does not include any interest that arises by operation of law. However, for purposes of the right of rescission under §§ 226.15 and 226.23, the term does include interests that arise by operation of law.

"State" means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) *Rules of construction.* For the purposes of this regulation, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words "obligation" and "transaction" are used in this regulation, they refer to a consumer credit or a consumer lease obligation or transaction, depending upon the context. Where the words "credit" and "lease"

are used in this regulation, they mean "consumer credit" and "consumer lease," respectively, unless the context clearly indicates otherwise.

(3) Where the words "the act" are used in this regulation, they refer to the Truth in Lending Act as amended, Title 15 of the United States Code §§ 1601 *et seq.*, unless the context clearly indicates otherwise.

(4) Unless defined in this regulation, the words used have the meanings given to them by state law or contract.

(5) Footnotes have the same legal effect as the next of the regulation.

§ 226.3 Exempted transactions.

This regulation does not apply to the following:

(a) *Business, commercial, agricultural, or organizational credit.* (1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) Credit extended to organizations, including credit to governmental agencies or instrumentalities.[1]

(b) *Credit over $25,000 not secured by real property or a dwelling.* An extension of credit, not secured by real property or personal property used or expected to be used as a principal dwelling of the consumer, in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000.

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission, if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any governmental unit. The financing of durable goods or home improvements by a public utility is not exempt.

(d) *Securities or commodities accounts.* Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Certain leases.* (1) A lease primarily for agricultural, business, or commercial purposes, or a lease to a person other than a natural person.

(2) A lease of personal property incident to a lease of real property, if the consumer has no liability for the value of the property at the end of the lease (except for abnormal wear and tear) and has no option to purchase the leased personal property.

(3) A lease of a safe deposit box or its equivalent.

(f) *Home fuel budget plans.* An installment agreement for the purchase of home fuels in which no finance charge is imposed.

§ 226.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction. The finance charge shall be considered accurate if the amount disclosed does not vary from the exact finance charge by more than the dollar amount equivalent of the annual percentage rate tolerance described in §§ 226.14(a) or 226.22(a)(2), as applicable.

(b) *Examples of finance charges.* Unless specifically excluded by paragraphs (c) through (f) of this section, the finance charge include the following types of charges:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, or carrying charge, including any charge imposed on a checking or other transaction account to the extent that it exceeds the charge for a similar account without a credit feature.

(3) Points, loan fee, assumption fee, finder's fee, or similar charge.

(4) Application, appraisal, investigation, or credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) A charge imposed upon a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charge in cash, as an addition to the obligation or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of, or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) A discount for the purpose of inducing payment other than by use of credit.

(c) *Charges excluded from finance charge.* The following charges shall be excluded from the finance charge.

(1) A charge for actual, unanticipated late payment, for exceeding a credit limit, and for delinquency, default, or a similar occurrence.

(2) A charge imposed by a financial institution for paying an item that inadvertently overdraws an account.

(3) A fee charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(4) The following fees, in a transaction secured by real property or a residential mortgage transaction, if they are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, or similar purposes.

(ii) Fees for preparing a deed, mortgage, reconveyance, settlement, or similar document.

(iii) Notary, appraisal, or credit report fees.

(iv) Amounts required to be paid into escrow or trustee accounts that would not otherwise be included in the finance charge.

(5) Seller's points.

(6) An interest reduction on a time deposit used as security for an extension of credit.

(d) *Insurance.* (1) Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following three conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed.

(ii) The premium for the initial term of insurance coverage or the unit cost of the premium for a stated period is disclosed. If the term of insurance is less than the other term of the transaction, the term of insurance shall be disclosed.

(iii) The consumer signs or initials an affirmative written statement requesting the insurance after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the statement.

(2) Premiums for insurance against loss of or damage to the property securing the obligation, or against liability arising out of the ownership or use of that property [2] may be excluded from the finance charge if the following two conditions are met:

(i) The insurance coverage may be obtained from a person of the

[1] Extensions of credit that are exempt under paragraphs (a) (1) and (2) remain subject to the provisions governing the issuance of credit cards and the liability for their unauthorized use, as set forth in §§ 226.12(a) and (b).

[2] This includes single interest insurance if the insurer waives all right of subrogation against the consumer.

consumer's choice,[3] and this fact is disclosed.

(ii) If coverage may be obtained from or through the creditor, the premium for the initial term of insurance coverage or the unit cost of the premium for a stated period shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall be disclosed.

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (1) of this section that otherwise would be payable.

(f) *Discounts*—(1) *Limitations.* A discount offered for the purpose of inducing payment for a purchase by cash, check, or similar means rather than by the use of an open-end credit card account (whether or not a credit card is physically used) is not a finance charge under paragraphs (a) and (b) of this section if:

(i) The discount does not exceed 5 percent of the regular price of the property or service; and

(ii) The discount is available to prospective purchasers, whether or not they are cardholders, and this fact is clearly and conspicuously disclosed.

(2) *Effect of state laws.* A discount that is not a finance charge under this paragraph shall not be considered a finance charge or other charge for credit under any state law relating to usury, disclosure of information in connection with credit extensions, or permissible charges for the extension or use of credit.

(g) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted from the fianance charge.

Subpart B—Open-End Credit

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing in a form that the consumer may keep.

(2) The words "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required terminology. This rule does not apply to § 226.7(d) and to advertisements under § 226.16.

(b) *Timing of disclosures*—(1) *Initial disclosures.* The creditor shall furnish the initial disclosure statement to the consumer before the first transaction is made under the plan.

(2) *Periodic statements.* (i) The creditor shall mail or deliver a periodic statement for each cycle at the end of which the account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account the creditor deems to be uncollectible.

(ii) The creditor shall mail or deliver the periodic statement at least 14 days prior to any date or the end of any time period required to be disclosed by § 226.7(k) in order for the consumer to avoid the imposition of an additional finance or other charge.[4] If the creditor fails to meet this requirement, no finance or other charges that were imposed as a result of the creditor's failure may be collected.

(c) *Multiple creditors; multiple consumers.* If the open-end credit plan involves more than one creditor, only one creditor need provide the consumer with a complete set of disclosures. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. When the right of rescission under § 226.15 is applicable, however, the disclosures required by § 226.6 and § 226.15(b) shall be made to each person having the right to rescind.

(d) *Basis of disclosures and use of estimates.* Disclosures shall be based on the assumption that the consumer will comply with the terms of the legally enforceable obligation between the parties. If any information necessary to make an accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available to it and shall state clearly that the disclosure is an estimate.

(e) *Effect of subsequent events.* If a disclosure is rendered inaccurate as a result of an event that occurs after delivery of the disclosures, the resulting inaccuracy is not a violation of this regulation, although new disclosures may be required under § 226.9(c).

§ 226.6 Initial disclosure statement.

The creditor shall disclose to the consumer, in terminology consistent with that in quotation marks in § 226.7, each of the following items, to the extent applicable:

(a) *Finance charge.* the circumstances under which a finance charge will be imposed and an explanation of the method of determining the finance charge, as follows:

(1) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge.[5] If no such time period is provided, that fact shall be disclosed.

(2) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable [6] and the corresponding annual percentage rate (determined by multiplying the periodic rate by the number of periods in a year).[7] If different periodic rates apply to different types of transactions (such as purchases and cash advances), those periodic rates and their corresponding annual percentage rates shall be disclosed, together with the types of transactions to which they apply.

(3) An explanation of the method used to detemine the balance on which the finance charge may be computed.

(4) An explanation of how the amount of any finance charge will be determined,[8] including a description of how any other finance charge other than the periodic rate will be determined.

(b) *Other charges.* An identification of any charges other than finance charges that may be imposed as part of the plan, together with a disclosure of either the amounts of those charges or an explanation of how the amounts of those charges will be determined.

(c) *Security interests.* The fact that the creditor has or will acquire a security interest either in the property purchased as part of the plan, or in other property identified by item or type.

[3] A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.

[4] This time limitation shall not apply if the creditor is unable to meet this requirement because of an act of God, war, civil disorder, natural disaster, or strike.

[5] If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's termination.

[6] A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

[7] Where a creditor is offering a variable rate plan, the creditor shall also disclose: (1) That the periodic rate(s) and corresponding annual percentage rate(s) are subject to increase; (2) the circumstances under which such rates may increase; and, if applicable, (3) the limitations on such rates.

[8] If no finance charge is imposed when the outstanding balance is less than a certain amount, no disclosure is required of that fact or of the balance below which no finance charge will be imposed.

(d) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under § 226.12(c) and § 226.13 and that is substantially similar to the statement found in Appendix F.

§ 226.7 Periodic statements.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Previous balance.* The outstanding account balance at the beginning of the billing cycle, using the term "previous balance," and in the case of a credit balance, an appropriate identification as such. Where there is more than one type of transaction (such as purchases and cash advances), the creditor may show a previous balance for each type of transaction.

(b) *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8.

(c) *Payments and credits.* The amount and date of crediting any payment or other credit during the billing cycle, using the term "payment" or "credit," as applicable. The date need not be provided if a delay in crediting does not result in the imposition of any finance or other charges.

(d) *Periodic rates.* Each periodic rate, using the term "periodic rate," that may be used to compute the finance charge, the range of balances to which it is applicable,[9] and the corresponding annual percentage rate (determined by multiplying the periodic rate by the number of periods in a year), using the term "corresponding annual percentage rate." [10] When different periodic rates apply to different types of transactions to which the periodic rates apply shall also be disclosed.

(e) *Other types of finance charges.* The amount or method of computing the amount of any other type of finance charge that may be imposed.

(f) *Balance on which finance charge computed.* The amount of each balance to which a different periodic rate was applied and an explanation of how each balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of such credits and payments shall be disclosed.

(g) *Amount of finance charge.* The amount of any finance charge debited or added to the account during the billing cycle, using the term "finance charge." The components of the finance charge shall be individually itemized and identified to show the amounts due to the application of any periodic rates and the amount of any other type of finance charge. Where there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(h) *Annual percentage rate.* When a finance charge is imposed during the billing cycle, the annual percentage rate or rates determined under § 226.14, using the term "annual percentage rate." Where an annual percentage rate cannot be determined under § 226.14(c)(2)(i), no annual percentage rate need be disclosed.

(i) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(j) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the outstanding account balance on that date, using the term "new balance," and in the case of a credit balance, an appropriate identification as such. If the periodic statement reflects more than one type of transaction, the creditor may show a new balance for each type of transaction.

(k) *Free-ride period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid in order to avoid the imposition of additional finance charges.[11]

(l) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

§ 226.8 Identification of transactions.

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the information required by this section, as applicable.[12]

(a) *Sale credit.* For each credit transaction involving the sale of property or services, the following rules shall apply:

(1) *Furnishing copy of credit document.* When an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, each transaction shall be sufficiently identified if the amount of the transaction, and either the date of the transaction or the date of debiting the transaction to the consumer's account are disclosed on the copy or on the periodic statement.

(2) *Not furnishing copy of credit document—creditor and seller same or related person(s).* When the creditor and the seller are the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction, and a brief identification [13] of the property or services purchased.[14]

(3) *Not furnishing copy of credit document—creditor and seller not same or related person(s).* When the creditor and seller are not the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction; the seller's name; and the city, and state or foreign country where the transaction took place.[15]

(b) *Nonsale credit.* For each nonsale credit transaction, the following rules shall apply:

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[9] See footnotes 6 and 8.

[10] See footnote 7 for additional disclosures required for a variable rate plan.

[11] See footnote 5.

[12] Failure to disclose the information required by this section shall not be deemed a failure to comply with the regulation if: (1) The creditor maintains procedures reasonably adapted to procure and provide the information; and (2) the creditor responds to and treats any inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e)(1). The creditor must also furnish the consumer with documentary evidence of the transaction, whether or not the consumer requests it, free of charge and within the time period allowed for resolution under § 226.13. This provision applies to foreign transactions even if the creditor does not maintain procedures reasonably adapted to obtain the required information.

[13] Alternatively, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer if the number or symbol reasonably identifies that transaction with that creditor. If the creditor discloses a number or symbol and the consumer submits a notice of a billing error regarding the transaction, the creditor shall comply with § 226.13, including correcting the account in accordance with § 226.13(e)(1). The creditor shall also furnish the consumer with documentary evidence of the transaction, whether or not the consumer requests it, free of charge and within the time period allowed for resolution under § 226.13.

[14] An identification of property or services may be replaced by the seller's name and the location of the transaction when: (1) The creditor and the seller are the same person; (2) the creditor's open-end plan has fewer than 15,000 accounts; (3) the creditor provides all consumers with point-of-sale transaction documentation; and (4) the creditor responds to consumers' notices of billing errors about transactions in the manner described in this paragraph. If all transactions with the seller occur at one location, the seller's name and that location need not be repeated on the periodic statement for each transaction.

[15] The creditor may omit the address or provide any suitable designation that assists the consumer in identifying the transaction when no meaningful address is readily available because the transaction (1) took place at a location that is not fixed; (2) took place in the consumer's home; or (3) was the result of a mail or telephone order.

(1) *Furnishing copy of credit document.* When an actual copy of the credit document is provided with the first periodic statement reflecting the transaction, each transaction shall be sufficiently identified if the copy reflects the amount of the transaction, and either the date of the transaction, the date of debiting the transaction to the consumer's account, or, if the consumer signed the credit document, the date appearing on that document.

(2) *Description of transaction.* When an actual copy of the receipt or other credit document containing the information described in paragraph (b)(1) of this section is not provided with the first periodic statement reflecting the transaction, the creditor shall disclose a characterization of the transaction (as a cash advance, loan, overdraft loan, or other appropriate designation); the amount of the transaction; and the date of the transaction, the date of debiting the transaction, or, if the consumer signed the credit document, the date appearing on that document.

§ 226.9 Subsequent disclosure requirements.

(a) *Furnishing statement of billing rights*—(1) *Annual statement.* The creditor shall mail or deliver the billing rights statement required by § 226.6(d) during at least one billing cycle per calendar year, at intervals of not less than six months nor more than 18 months, to each consumer entitled to receive a periodic statement under § 226.5(b)(2) for that billing cycle.

(2) *Alternative summary statement.* As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement that is substantially similar to that in Appendix F.

(b) *Disclosures for supplemental credit devices and additional features.* (1) If a creditor, more than 30 days after mailing or delivering the initial disclosures, adds a credit feature to the consumer's account or mails or delivers to a consumer (other than as a renewal or resupply) any credit device, the creditor shall make the disclosures required by § 226.6(a).

(2) If the feature is added or the device is mailed or delivered within 30 days of the mailing or delivery of the initial disclosures, and the finance charge terms for the device or feature differ from those previously disclosed, the dislosures required by § 226.6(a) shall be given.

(3) The disclosures required in paragraphs (b) (1) and (2) of this section shall be made to the consumer before the consumer uses the feature or device for the first time.

(c) *Change in terms*—(1) *Written notice required.* (i) Except as provided elsewhere in this subsection, whenever any term required to be disclosed under § 226.6 is changed, the creditor shall mail or deliver to the consumer written notice of the change at least 15 days prior to the effective date of the change.

(ii) The 15-day timing requirement of this section does not apply when the change has been agreed to by the consumer, or when a periodic rate or other finance charge is increased as a result of the consumer's delinquency or default.

(2) *Notice not required.* No notice under this section is required when the change:

(i) Involves late payment charges, charges for documentary evidence, or over-the-limit charges;

(ii) Reduces any component of a finance or other charge;

(iii) Suspends future credit privileges or terminates an account or plan;

(iv) Results from the consumer's default or delinquency, unless the periodic rate of other finance charge is increased; or

(v) Results from an agreement involving a court proceeding.

(d) *Finance charge imposed at time of transaction.* (1) Any person honoring a consumer's credit card, other than the card issuer, who imposes a finance charge not excepted by § 226.4(f) shall, at the time of honoring a consumer's credit card, make the disclosures required under §§ 226.18 (b), (c), and (d). The annual percentage rate to be disclosed shall be determined by dividing the finance charge by the amount financed and multiplying the quotient (expressed as a percentage) by 12.

(2) The card issuer, if other than the person honoring the consumer's credit card shall have no responsibility for disclosures required by paragraph (d)(1) of this section and shall not separately consider any charge imposed under paragraph (d)(1) of this section for purposes of §§ 226.6 and 226.7.

§ 226.10 Prompt crediting of payments.

(a) *General rule.* A creditor shall credit a payment to the consumer's account as of the date of receipt.[16]

(b) *Specific requirements for payments.* A creditor may specify (on or with the periodic statement) reasonable requirements for the consumer to follow in making payments. If the creditor does so, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment promptly.

(c) *Adjustment of account.* If a creditor fails to post a payment in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

§ 226.11 Treatment of credit balances.

Whenever a creditor receives a payment or other credit that exceeds by more than $1 the new balance (as defined in § 226.7(j)) to which the payment or other credit is to be applied, the creditor shall:

(a)(1) Credit the consumer's account with an amount equal to the new balance, and within seven business days from receipt of the payment or other credit, refund the excess amount; or

(2) Credit the consumer's account with the total amount of the payment or other credit. If the consumer requests in writing a refund of any part of the credit balance, the creditor shall refund any such credit balance within seven business days from receipt of the consumer's request.

(b) Make a good faith effort to refund to the consumer by cash, check, or money order any part of the amount of the credit balance remaining in the account for more than six months, but no further action is required if the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number.

§ 226.12 Special credit card provisions.

(a) *Issuance of credit cards.* Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except:

(1) In response to an oral or written request or application [17] by a cardholder; [18] or

[16] A payment need not be credited as of the date of receipt if a delay in crediting does not result in the imposition of a finance or other charge.

[17] This paragraph does not prohibit the issuance, on an unsolicited basis, of any device that may become a credit card provided that (1) the device has a substantive purpose other than obtaining credit, and (2) any credit capability is attached only upon the recipient's request.

[18] The card issuer may send cards to any cardholder(s) or authorized user(s) in accordance with the cardholder's request or application; provided, however, that an authorized user shall not be liable for unauthorized use of a credit card. The card issuer may send more than one credit card to a person if so requested, and may imprint on any card any name(s) requested. For purposes of this section, "authorized user" means a person to whom a credit card is issued upon the request or application of a

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(2) As a renewal of, or substitute for, an accepted credit card.[19]

(b) *Liability of cardholder for unauthorized use.*[20] (1) *Limitation on amount.* The liability of a cardholder for unauthorized use[21] of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) *Conditions of liability.* A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided, on the credit card or within two years preceding the unauthorized use, adequate notice [22] of the cardholder's maximum potential liability. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount); that the cardholder may give oral or written notification of loss, theft, or possible unauthorized use; and the address of the person or office to receive the notification;

(iii) The card issuer has disclosed to the cardholder, on or with the periodic statement that immediately precedes the unauthorized use, the telephone number and address of the person or office to be notified of loss, theft, or possible unauthorized use; and

(iv) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) *Notification to card issuer.* Notification to a card issuer is given when such steps have been taken as may be reasonably necessary to provide the card issuer with pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, received the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) *Effect of other applicable law or agreement.* If applicable state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the cardholder's liability shall not exceed the lesser liability imposed under that law or agreement.

(5) *Business use of credit cards.* If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, nothing in this section prohibits the card issuer and the organization from agreeing to liability for unauthorized use without regard to the provisions of this section. However, liability for unauthorized use may be imposed on any employee of the organization, by either the card issuer or the organization, only in accordance with this section.

(c) *Right of cardholder to assert claims or defenses against card issuer.* (1) *Limitations.* When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount. These rights apply, however, only if: (i) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card;

(ii) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50; and

(iii) The disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.

(2) *Exceptions.* The limitations stated in paragraphs (c)(1)(ii) and (iii) of this section shall not apply when the person honoring the credit card:

(i) Is the same person as the card issuer;

(ii) Is controlled by the card issuer directly or indirectly;

(iii) Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;

(iv) Controls the card issuer directly or indirectly;

(v) Is a franchised dealer in the card issuer's products or services; or

(vi) Has obtained the order for the disputed transaction through a mail solicitation made or by participated in by the card issuer.

(3) *Maximum amount of claims or defenses; determining credit outstanding.* The amount of the claim or defense that the cardholder may assert may not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. To determine the amount of credit outstanding for the purposes of this section, payments and other credits shall be applied in the following order: (i) Late charges in the order of entry to the account;

(ii) Finance charges in the order of entry to the account; and

(iii) Any other debts in the order of entry to the account. When more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

(4) *Types of transactions excluded.* This paragraph does not apply to the use of a credit card to obtain a cash advance unrelated to any specific credit sale item not to the use of a check guarantee card in connection with a check when there is no agreement between the card issuer and the merchant relating to honoring the card or the checks.

(5) *Adverse credit reports prohibited.* If, in accordance with this paragraph, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, and if the card issuer knows or has reason to know that the claim or defense has been asserted, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered. If the card issuer has reported an amount as delinquent and subsequently learns that a claim or defense has been asserted with respect to that amount, the card issuer shall, within one billing cycle after so learning, notify all credit bureaus and, to the extent possible, all other persons, to whom the card issuer has made a report, that the disputed amount is not delinquent. Nothing in this paragraph prohibits a card issuer from

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cardholder for any purpose, including business, commercial, or agricultural use.

[19] For purposes of this section, "accepted credit card" means any credit card that a cardholder or an authorized user has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with this paragraph becomes an accepted credit card when received by a cardholder or an authorized user.

[20] See section 133(b) of the act for rules concerning burdens of proof in actions to enforce liability for use of credit cards.

[21] "Unauthorized use" means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

[22] "Adequate notice" means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. (See Appendix F for model notice.)

reporting the disputed amount or account as being in dispute.

(d) *Offsets by card issuer prohibited.* (1) A card issuer may not take any action, whether before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder on deposit with the card issuer.

(2) This paragaph does not alter or affect the right of a card issuer acting under state or federal law to do any of the following with regard to funds of a cardholder held deposit with the card issuer if the same procedure is constitutionally available to creditors generally: (i) Obtain or enforce a consensual security interest (limited to an agreed-upon amount) in the funds;

(ii) Attach or otherwise levy upon the funds; or

(iii) Obtain or enforce a court order relating to the funds.

(3) This paragraph does not prohibit the cardholder and the card issuer from agreeing in writing to a plan under which the card issuer may periodically deduct all or a portion of the cardholder's credit card debt from a deposit account with the card issuer (subject to the limitations in § 226.13(d)(5)).

(e) *Prompt notification of returns and crediting of refunds.* (1) When any creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's open-end credit card account, that creditor shall, within the seven business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within three business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor must also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. Nothing in this section shall be construed to require refunds for returns or to prohibit refunds in kind.

(f) *Discounts; ti-in arrangements.* No card issuer may, by contract or otherwise: (1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer, its subsidiary, agent, or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Prohibition of surcharges.* No creditor in any sale transaction may impose a surcharge.[23] This paragraph shall cease to be effective on February 27, 1981.

(h) *Relation to Electronic Fund Transfer Act and Regulation E.*—(1) *Issuance.* The Truth in Lending Act and this regulation govern: (A) Issuance of credit cards;

(B) Addition of a credit feature to an accepted access device, as defined in 12 CFR 205.2(a), whether done when the accepted access device is renewed, or otherwise; and

(C) Issuance of credit cards that are also access devices, as defined in 12 CFR 205.2(a), except as provided in paragraph (h)(1)(ii)(C) of this section.

(ii) The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and 12 CFR Part 205 (Regulation E), which restrict the unsolicited issuance of access devices, govern: (A) Issuance of access devices;

(B) Addition to an accepted credit card of the capability to initiate electronic fund transfers, whether done when the accepted credit card is renewed, or otherwise; and

(C) Issuance of access devices that permit credit extensions only under a preexisting agreement to extend credit when the consumer's deposit account is overdrawn or to maintain a specified minimum balance in the consumer's deposit account.

(2) *Liability.* (i) The Truth in Lending Act and this regulation govern a consumer's liability for unauthorized use of a credit card that is also an access device but that does not involve an electronic fund transfer.

(ii) The Electronic Fund Transfer Act and Regulation E govern a consumer's liability for an unauthorized electronic fund transfer that: (A) Is initiated by use of an access device that is also a credit card; or

(B) Involves an extension of credit under an agreement to extend credit when the consumer's deposit account is overdrawn or to maintain a specified minimum balance in the consumer's deposit account.

(3) *Other rules.* Paragraphs (c) through (g) of this section, and the corresponding provisions of the Truth in Lending Act, apply to the use of credit cards that are also access devices to the extent appropriate under the terms of those paragraphs.

§ 226.13 Billing error resolution.[24]

(a) *Definition of billing error.* For purposes of this section, the term "billing error" means: (1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan;

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§ 226.7(b) and 226.8;

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed;

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account;

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor;

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence;

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last address if the current address was furnished to the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(b) *Billing error notice.*[25] A billing error notice is a written notice[26] from a

[23] "Surcharge" means any amount added at the point of sale to the regular price as a condition or consequence of payment being made by use of an open-end credit card account.

[24] A creditor shall not accelerate the consumer's entire debt or restrict or close a consumer's account solely because the consumer has exercised rights provided by this section.

[25] The creditor need not comply with the requirements of paragraphs (c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice.

[26] The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by § 226.6(d) and § 226.9(a).

consumer that: (1) Is received by a creditor at the address disclosed under § 226.7(1) no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.* (1) Not later than 30 days after receiving a billing error notice, a creditor shall mail or deliver written acknowledgment of receipt to the consumer, unless it has complied with the appropriate resolution procedures required by paragraphs (e) and (f) of this section within the 30-day period; and

(2) Not later than the end of the second complete billing cycle (but in no event later than 90 days) after receiving a billing error notice, the creditor shall comply with the appropriate resolution procedures required by paragraphs (e) and (f) of this section.

(3) A creditor may make, without investigation, a final correction to a consumer's account in the amount or manner asserted by the consumer to be in error, but must comply with all other applicable requirements of this section.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply: (1) *Consumer's right to withhold disputed amount.* The consumer may withhold that portion of any required payment that the consumer believes is related to the disputed amount. If the disputed amount is only part of the total amount of an item or bill, the consumer remains obligated to pay the undisputed portion and any periodic payment on the undisputed portion. No additional finance or other charges may be imposed on the undisputed portion of the amount solely because the consumer withholds payment of the disputed amount.

(2) *Creditor's handling of disputed amount.* A creditor is not prohibited from: (i) Mailing or delivering a periodic statement that reflects a disputed amount and related finance or other charges, provided the creditor indicates on or with the periodic statement that payment of the disputed amount and related finance or other charges is not required pending the creditor's compliance with this section; or

(ii) Deducting any disputed amount and related finance or other charges from the maximum amount of credit available to the consumer.

(3) *Collection action prohibited.* The creditor shall not take any action to collect any part of the disputed amount or related finance or other charges. If the creditor or its agent inadvertently takes such action within three business days after receiving a billing error notice, the collection action is not a violation of this paragraph, provided: (i) The collection action occurred despite the maintenance of procedures reasonably adapted to ensure compliance with this paragraph; and

(ii) The creditor promptly ceases any further collection activity, and takes any reasonable action necessary to correct the collection action.

(4) *Adverse credit reports prohibited.* (i) The creditory shall not (directly or indirectly) make or threaten to make an adverse report to any person regarding the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges. If the creditor or its agent inadvertently takes such action within three business days after receiving a billing error notice, the action is not a violation of this paragraph, provided: (A) The action occurred despite the maintenance of procedures reasonably adapted to ensure compliance with this paragraph; and

(B) The creditor promptly notifies all credit bureaus and all other persons (to the extent possible), to whom the creditor has made a report, that the amount or account is not delinquent.

(ii) If the creditor receives a billing error notice after adversely reporting about an amount or account, the creditor shall notify all credit bureaus and all other persons (to the extent possible) to whom the creditor has made a report that the amount or account is not delinquent, within one billing cycle after receiving the billing error notice.

(5) *Automatic debit of disputed amounts.* If a cardholder participates in an automatic payment paln, by maintaining an account with a card issuer that is authorized to deduct periodically an agreed upon amount from the account to pay the credit card indebtedness, and the card issuer receives a billing error notice any time up to three business days before the automatic-debit date, the card issuer shall not debit any part of the disputed amount or related finance or other charges.

(e) *Procedures after creditor determines that billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall promptly but no later than the time limits in paragraph (c)(2) of this section,

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver to the consumer a separate notice of the correction, or specifically identify the correction on or with a periodic statement that is mailed within the time limits in paragraph (c)(2) of this section.

(f) *Procedures after creditor determines different billing error or no billing error occurred.* If, after conducting a reasonable investigation,[27] a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall, promptly but no later than the time limits in paragraph (c)(2) of this section,

(1) Mail or deliver to the consumer an explanation (either separately or with a periodic statement) that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of ducumentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer still owes all or part of a disputed amount and related finance or other charges, the creditor: (1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount that the consumer still owes, which may include minimum periodic payments that accrued during the error resolution period;

(2) Shall allow the time period disclosed under §§ 226.6(a)(1) and 226.7(k) or 10 days (whichever is longer), during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges, if the creditor customarily allows such a time period in undisputed transactions;

(3) May report an account or amount as delinquent because a disputed

[27] If a consumer submits a billing error notice alleging the non-delivery of property or services under paragraph (a)(3) of this section or that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card has made an incorrect report to the card issuer, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered as agreed or that the information was correct.

amount and related finance or other charges remain unpaid: *Provided,* The creditor has allowed the time period disclosed under §§ 226.6(a)(1) and 226.7(k) or 10 days (whichever is longer), during which the consumer can pay the amount due under paragraph (g)(1) of this section; but

(4) May not report that an amount or account is delinquent because the disputed amount and related finance or other charges remain unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also: (i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports the subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(h) *Reassertion of billing error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section, if a consumer reasserts (other than as provided in paragraph (g)(4) of this section) substantially the same billing error.

(i) *Forfeiture penalty.*[28] (1) Any creditor that fails to comply with the requirements of this section forfeits any right to collect the disputed amount and related finance or other charges from a consumer even if no billing error occurred, however, the forfeited amount shall not exceed $50 for each asserted billing error.

(2) A creditor shall not forfeit more than once for each asserted billing error, nor shall a creditor forfeit any amount for an error in a total or subtotal figure (on a periodic statement) solely because a billing error is a component of the total or subtotal figure.

(k) *Relation to Electronic Fund Transfer Act and regulations.* If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E § 205.11 (12 CFR Part 205) governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

§ 226.14 Determination of annual percentage rate.

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than 1/8th of 1 percentage point above or below the annual percentage rate determined in accordance with this section.

(b) *Annual percentage rate for initial disclosures and for advertising purposes.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate to be disclosed for purposes of § 226.6(a)(2) before opening an account and for advertising purposes under § 226.16 shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) *Annual percentage rate for periodic statements.* The annual percentage rate to be disclosed for purposes of § 226.7(d) shall be computed by multiplying each periodic rate by the number of periods in a year and, for purposes of § 226.7(h), shall be determined as follows: (1) Where the finance charge is determined solely by applying one or more periodic rates, the annual percentage rate shall be determined, at the creditor's option, either: (i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2)(i) Except as provided in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section, where the finance charge imposed during the billing cycle includes a minimum, fixed, or other charge not due to the application of a periodic rate, the annual percentage rate shall be determined by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable [29] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(ii) Where the finance charge imposed during the billing cycle includes a charge relating to a specific transaction, the annual percentage rate shall be determined by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and by multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,[30] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.

(iii) Where the finance charge imposed during the billing cycle includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the annual percentage rate may be determined, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) (i) and (ii) of this section.

(d) *Calculations where daily periodic rate applied.* In any open-end credit account to which the provisions of paragraphs (c)(1)(ii) or (c)(2)(i) of this section apply where all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either: (1) By dividing the total finance charge by the average of daily balances and multiplying the quotient by the number of billing cycles in a year; or (2) by dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

(e) *Errors in calculation tools.* (1) An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if: (i) The error resulted from a corresponding error in any calculation tool used in good faith by the creditor; and

(ii) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.

(2) This paragraph shall cease to be effective on April 1, 1982.

§ 226.15 Right of rescission.

(a) *Consumer's right to rescind.*[31] (1) In an open-end credit plan in which a security interest is or will be retained or

[28] Nothing in this paragraph limits a consumer's right to recover under § 130 of the act.

[29] If there is no balance to which the finance charge is applicable, and annual percentage rate cannot be determined under this section. (See also § 226.7(h).)

[30] See Appendix E regarding determining the denominator of the fraction under this paragraph.

[31] The right to rescind does not apply to an open-end credit plan in which a federal or state agency is the creditor.

acquired in a consumer's principal dwelling, each consumer whose ownership interest is subject to the security interest shall have the right to rescind, at the creditor's option, Rither:
(i) Each transaction made under the plan; or
(ii) The plan when the plan is opened; a security interest when added or increased to secure an existing open-end plan; and the increase when the credit limit on the plan is increased.[32]
(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other written means of communication. Notice is considered given when mailed, when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business.
(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, [33] whichever is last. If the required notice and material disclosures are not delivered, the right to rescind shall expire three years after the occurrence giving rise to the right of rescission or upon transfer of all of the consumer's interest in the property, whichever is earlier. In the case of certain administrative proceedings, the rescission period will be extended by one year in accordance with § 125(f) of the act.
(4) When more than one consumer has the right to rescind, the exercise of the right by any one of these consumers shall be effective as to all consumers.
(b) *Notice of right to rescind.* In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following: (1) The retention or acquisition of a security interest in the consumer's principal dwelling;
(2) the consumer's right to rescind as described in paragraph (a)(1) of this section;
(3) The way to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business;
(4) the effects of rescission, as described in paragraph (d) of this section; and
(5) The date the rescission period expires.
(c) *Delay of creditor's performance.* Unless a consumer waives the right to rescind under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate this section if a third party with no knowledge of the event activating the right of rescission provides materials or services to the consumer within this period, as long as no security interest in the property subject to rescission is taken by the creditor to secure debts incurred by the consumer during the rescission period.
(d) *Effects of rescission.* (1)(i) When a consumer rescinds an individual transaction, the security interest giving rise to the right of rescission becomes void. A consumer who rescinds a transaction shall not be liable for any amounts, including any finance charge, related to the credit extension.
(ii) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property given to any party by the consumer in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.
(iii) If the creditor has delivered any money or property, the consumer may keep it until the creditor has met its obligations under paragraph (d)(1)(ii) of this section. When the creditor has done so, the consumer shall tender the money or property to the creditor, or, when the latter would be impracticable or inequitable, the consumer shall tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. If the creditor does not take the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.
(iv) The prodecures outlined in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section may be modified by court order.
(2) a consumer who rescinds under paragraph (a)(1)(ii) of this section shall not be liable for any amounts related to the particular occurrence activating the right of rescission, and the security interest giving rise to the right of rescission shall be void. Within 20 calendar days after receipt of a rescission notice, the creditor shall return any such amounts given to any party by the consumer and shall take any action necessary to reflect the termination of the security interest. This paragraph does not affect the validity of the consumer's underlying obligations with regard to individual transactions made on the account with third parties during the rescission period.
(e) *Consumer's waiver of right to rescind.* The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, that specifically modifies or waives the right to rescind, and that bears the signatures of the consumers entitled to rescind. Printed forms are prohibited.

§ 226.16 Advertising.

(a) *Actually available terms.* If an advertisement for open-end credit states specific credit terms, it shall state only those terms that the creditor actually arranges or offers.
(b) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under § 226.6 is set forth in or determinable from an advertisement, the advertisement shall also clearly and conspicuously set forth: (1) Any minimum, fixed, transaction, membership, participation, activity or similar charge that could be imposed; and
(2) Any periodic rate that could be applied, expressed as a corresponding annual percentage rate as determined under § 226.14(b).
(c) *Catalogs and multiple-page advertisements.* (1) If a catalog or other multiple-page advertisement gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if: (i) The table or schedule is clearly and conspicuously set forth; and
(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to that page on which the table or schedule begins.
(2) A catalog or multiple-page advertisement complies with this paragraph if the table or schedule of

[32] This option shall only be available until March 31, 1985. After that time, the consumer shall have the right to rescind each subsequent advance made under an open-end credit plan secured by the consumer's principal dwelling.
[33] For purposes of this section, the term "material disclosures" means the information that must be provided to satisfy the requirements in § 226.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, and the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan.

terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Subpart C—Closed-End Credit

§ 226.17 General disclosure requirements.

(a) *Time of disclosures.* Disclosures shall be made before consummation of the transaction. In certain residential mortgage transactions, however, special timing requirements are set forth in § 226.19. In certain transactions involving mail or telephone orders or a series of sales, the timing of the disclosures may be delayed in accordance with paragraphs (f) and (g) of this section.

(b) *Form of disclosures.* (1) The disclosures shall be made clearly and conspicuously in writing in a form that the consumer may keep, either on the credit contract or on a separate document. The disclosures shall be grouped together beginning on the front of the document, shall be segregated from everything else, and shall not contain any other information not directly related [34] to the disclosures required under § 226.18.[35] The explanation of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under that section.

(2) Where the words "finance charge" and "annual percentage rate" are required to be disclosed in § 226.18(d) and (e) together with a corresponding amount or percentage rate, those words shall be more conspicuous than any other disclosure required by this regulation. Information relating to the creditor's identity is not governed by this rule.

(c) *Basis of disclosures and use of estimates.* (1) The creditor shall base the disclosures on the information known to it at the time it makes the disclosures. The disclosures shall be based on the assumption that the consumer will comply with the terms of the legally enforceable obligation between the parties.

(2) When any information necessary to make an accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available to it and shall state that the disclosure is an estimate.

(3) The creditor may disregard the effects of the following in making all calculations and required disclosures: (i) That payments must be collected in whole cents;

(ii) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day;

(iii) That months have different numbers of days; and

(iv) The occurrence of leap year.

(4) The creditor may treat the following irregular first periods as if they were regular, and may disregard an irregular final payment (or portion of a final payment) that results from the irregular first period: [36]

(i) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;

(ii) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and

(iii) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(5) When an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of 1 year. When there is a legally enforceable alternate maturity date, the disclosures shall be based on that date.

(6)(i) A single obligation shall not be disclosed as two or more transactions; two or more obligations shall not be disclosed as a single transaction.

(ii) When a series of advances may be made under an agreement to extend credit up to a certain amount, the series may be considered as one transaction.

(iii) When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as one transaction or as two transactions.

(d) *Multiple creditors; multiple consumers.* When a transaction involves more than one creditor, only one creditor need make all of the disclosures and only one complete set of disclosures shall be given. When there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. When a transaction is rescindable under § 226.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) *Effect of subsequent events.* (1) When a disclosure is rendered inaccurate as a result of an event that occurs after the delivery of the disclosures, the resulting inaccuracy is not a violation of this regulation.

(2) In certain residential mortgage transactions, the creditor shall disclose the changed term, as described in § 226.19.

(3) When the event occurs after consummation, the determination of whether new disclosures are required is governed by § 226.20.

(f) *Mail or telephone orders—delay in disclosures.* (1) If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or any other written or electronic communication without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment. This delay is permitted only if the following information describing representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request: (i) The cash price or the principal loan amount. (ii) The total sale price. (iii) The finance charge. (iv) The annual percentage rate. (v) The terms of repayment.

(2) If the information specified in paragraph (f)(1) of this section is not available in the prescribed manner, the disclosures must be made before consummation of the transaction.

(g) *Series of sales—delay in disclosures.* If a credit sale is one of a series made under an agreement providing that subsequent sales can be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale. This delay is permitted only if the following two conditions are met: (1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For the purpose of this provision, in the

[34] The disclosures may include an acknowledgement of receipt and the consumer's name and account number.

[35] The following disclosures may be made together or separately from any other required disclosures: The creditor's identity under § 226.18(a), insurance charges under § 226.18(n) and itemized charges under § 226.18(o).

[36] For purposes of paragraph (c)(4) of this section, the "first period" is the period from the date on which the finance charge begins to be earned to the date of the first payment; the "term" is the period from the date on which the finance charge begins to be earned to the date of the final payment, and the "regular period" is the most common interval between payments in the transaction. In transactions involving regular periods that are monthly, semimonthly, or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of elapsed days or an assumed 30-day month. In other transactions, the length of the periods shall be based on the actual number of days.

case of items purchased on different dates, the first purchased shall be deemed the first paid for; in the case of items purchased on the same date, the lowest priced shall be deemed the first paid for.

§ 226.18 Content of disclosures.

For each transaction,[37] the creditor shall disclose the following information, as applicable: (a) *Creditor.* The identity of the creditor making the disclosures.

(b) *Amount financed.* The "amount financed," using that term, and a brief description such as "the amount of credit provided to you or on your behalf." The amount financed is calculated by: (1) Determining the principal loan amount (excluding any finance charge) or the cash price (excluding any downpayment);

(2) Adding any other amounts financed by the consumer and not part of the finance charge; and

(3) Subtracting any prepaid finance charge.

(c) *Explanation of amount financed.*[38] (1) A written explanation of the amount financed, consisting of: (i) The prepaid finance charge.

(ii) The amount of any proceeds distributed directly to the consumer.

(iii) The amount credited to the consumer's account with the creditor.

(iv) Any amounts paid to other persons by the creditor on the consumer's behalf, other than amounts included in paragraph (c)(1)(i) of this section. The creditor shall identify those persons.[39]

(2) The creditor need not comply with paragraph (c)(1) of this section if the creditor provides a statement that the consumer has the right to receive a written explanation of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.

(d) *Finance charge.* The "finance charge," using that term, and a brief description such as "the dollar amount the credit will cost you."

(e) *Annual percentage rate.*[40] The "annual percentage rate," using that term, and a brief description such as "the cost of your credit as a yearly rate."

(f) *Variable rate.* If the annual percentage rate may increase, the following disclosures: (1) The circumstances under which the annual percentage rate may increase (including identification of any index to which the rate is tied);

(2) The limitations, if any, on the increase, which need not be expressed as an annual percentage rate;

(3) The manner in which any increase would occur, such as an increase in the number or amount of payments; and

(4) In a residential mortgage transaction, an example of the payment terms that would result from an increase imposed in accordance with the disclosures made under this paragraph.

(g) *Payment schedule.* The number, amounts,[41] and timing of payments scheduled to repay the obligation.

(h) *Total of payments.* The "total of payments," using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments."[42]

(i) *Demand features.* When the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of 1 year as provided in § 226.17(c)(5), that assumption shall also be disclosed.

(j) *Total sale price.* In a credit sale, the "total sale price," using that term, and a descriptive explanation (including the amount of any downpayment) such as "the total price of your purchase on credit, including your downpayment of $———." The total sale price is the sum of the cash price, the items described in paragraph (b)(2) and the finance charge disclosed under paragraph (d) of this section.

(k) *Prepayment.* (1) When an obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full, whether voluntarily or not.

(2) A statement indicating whether or not the consumer must pay the entire finance charge if the obligation is prepaid in full, whether voluntarily or not.

(l) *Late payment.* Any dollar or percentage charge that maybe imposed before maturity due to a late payment, other than a deferral or extension charge.

(m) *Security interest.* The fact that the creditor has or will acquire a security interest either in the property purchased as part of the transaction, or in other property identified by item or type.

(n) *Insurance charges.* The items required by § 226.4(d) in order to exclude certain insurance premiums from the finance charge.

(o) *Excludable charges.* The disclosure required by § 226.4(e) in order to exclude certain charges from the finance charge.

(p) *Contract reference.* A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

(q) *Assumption policy.* In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.[43]

§ 226.19 Certain residential mortgage transactions.

(a) *Time of disclosure.* In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (Title 12, §§ 2601 through 2617 of the United States Code), the disclosures required by § 226.18 shall be made before consummation or shall be delivered or placed in the mail not later than 3 business days after the creditor receives the consumer's written application, whichever is earlier. The creditor shall make good faith estimates of the required disclosures.

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[37] For each transaction under a student credit guarantee program involving an extension of credit without a set repayment schedule, the creditor need not disclose the finance charge under paragraph (d), the payment schedule under paragraph (g), the total of payments under paragraph (h) or the total sale price under paragraph (j) of this section. Before the final obligation or repayment schedule is agreed upon, the creditor shall make all applicable disclosures, except for the total sale price under paragraph (j) of this section.

[38] Transactions subject to the Real Estate Settlement Procedures Act (Title 12, §§ 2601 through 2617 of the United States Code) may comply with paragraph (c) of this section by combining the disclosures required by that paragraph with the good faith estimate of settlement costs required by that act. See § G(4) of Appendix G for a model form which may be used for this purpose.

[39] Public officials or governmental agencies may be described using those or similar terms and need not be further identified.

[40] For any transaction involving a finance charge of $5 or less on an amount financed of $75 or less, or a finance charge of $7.50 or less on an amount financed of more than $75, the creditor need not disclose the annual percentage rate.

[41] If the amount of any payment in a series is not more than five percent larger than the smallest payment in that series, the creditor may treat all payments in the series as equal by disclosing the largest payment amount, labeled as an estimate. This rule governs only the disclosure of payment amounts; it does not affect the disclosure of the finance charge under paragraph (d) of this section or the determination of the annual percentage rate under § 226.22.

[42] For any transaction involving a single payment, the creditor need not disclose the total of payments.

[43] If a creditor requires a subsequent purchaser to pay an assumption fee or similar charge, the assumption is not considered to be on terms differing from the original ones. However, a change in the interest rate originally imposed is considered a different term.

(b) *Redisclosure required.* If the annual percentage rate in the consummated transaction is more than ⅛ of 1 percentage point above or below the annual percentage rate disclosed under § 226.18(e), the changed terms shall be disclosed no later than consummation. In irregular transactions, the changed terms shall be disclosed no later than consummation if the annual percentage rate in the consummated transaction is more than ¼ of 1 percentage point above or below the annual percentage rate disclosed under § 226.18(e).

§ 226.20 Subsequent disclosure requirements.

(a) *Refinancings.* A refinancing occurs when an existing obligation that was subject to this section is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The creditor shall include in the new finance charge any unearned portion of the old finance charge that is not credited to the existing obligation.

(b) *Assumptions.* An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction. The creditor shall make new disclosures based on the remaining obligation to the subsequent consumer before the assumption occurs.

§ 226.21 Treatment of credit balances.

Whenever a credit balance in excess of $1 is credited in connection with a transaction through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer, the creditor shall:

(a) Credit the amount of the credit balance to the consumer's account;

(b) Refund any part of the amount of the remaining credit balance, upon request of the consumer; and

(c) Make a good faith effort to refund to the consumer by cash, check, or money order any part of the amount of the credit balance remaining in the account for more than 6 months, except that no further action is required if the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number.

§ 226.22 Determination of annual percentage rate.

(a) *Accuracy of annual percentage rate.* (1) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, which relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in Supplement I of this regulation (§ 226.40).

(2) As a general rule, the annual percentage rate will be considered accurate if it is not more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.

(3) In an irregular transaction, the annual percentage rate shall be considered accurate if it is not more than ¼ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.[44]

(b) *Computation tools.* (1) The Regulation Z Annual Percentage Rate Tables produced by the Board may be used to determine the annual percentage rate, and any rate determined from those tables in accordance with the accompanying instructions complies with the requirements of this section. Volume I of the tables applies to single advance transactions involving up to 480 monthly payments or 104 weekly payments. It may be used for regular transactions and for transactions with any of the following irregularities: An irregular first period, an irregular first payment, and an irregular final payment. Volume II of the tables applies to transactions involving multiple advances and any type of payment or period irregularity.

(2) Creditors may use any other computation tool in determining the annual percentage rate if the annual percentage rate so determined equals the annual percentage rate determined in accordance with Supplement I, within the degree of accuracy set forth in paragraph (a) of this section.

(c) *Single add-on rate transactions.* If a single add-on rate is applied to all transactions with maturities up to 60 months and if all payments are equal in amount and period, a single annual percentage rate may be disclosed for all those transactions, so long as it is the highest annual percentage rate for any such transaction.

(d) *Certain transactions involving ranges of balances.* For purposes of disclosing the annual percentage rate referred to in §§ 226.17(f)(1)(iv) (Mail or telephone orders—delay in disclosures) and 226.17(g)(Series of sales—delay in disclosures), if the same finance charge is imposed on all balances within a specified range of balances, the annual percentage rate computed for the median balance may be disclosed for all the balances. However, if the annual percentage rate computed for the median balance understates the annual percentage rate computed for the lowest balance by more than 8 percent of the latter rate, the annual percentage rate shall be computed on whatever lower balance will produce an annual percentage rate that does not result in an understatement of more than 8 percent of the rate determined on the lowest balance.

(e) *Payment schedule irregularities.*[45] In determining and disclosing the annual percentage rate, a creditor may disregard an irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period:

(1) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period.

(2) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period.

(3) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(f) *Errors in calculation tools.* (1) An error in disclosure of the annual percentage rate or finance charge shall not by itself be considered a violation of this regulation if:

(i) The error resulted from a corresponding error in any calculation tool used in good faith by the creditor; and

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[44] For purposes of paragraph (a)(3) of this section, an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods or irregular payment amounts.

[45] For purposes of paragraph (e) of this section, the "first period" is the period from the date on which the finance charge begins to be earned to the date of the first payment; the "term" is the period from the date on which the finance charge begins to be earned to the date of the final payment; and the "regular period" is the most common interval between payments in the transaction. In transactions involving regular periods that are monthly, semimonthly, or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of elapsed days or an assumed 30-day month. In all other transactions, the length of the periods shall be based on the actual number of elapsed days.

(ii) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes and notifies the Board in writing of the error in the calulation tool.

(2) This paragraph shall cease to be effective on April 1, 1982.

§ 226.23 Right of rescission.

(a) *Consumer's right to rescind.* (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except the transactions described in paragraph (f) of this section.[46]

(2) To exercise the right to rescind, the consumer shall notify the creditor of the recission by mail, telegram or other written means of communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when deliverd to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, whichever is last.[47] If the required notice or material disclosures are not delivered, the right to rescind will expire 3 years after consummation or upon transfer of all of the consumer's interest in the property, whichever is earlier. In the case of certain administrative proceedings, the rescission period will be extended by 1 year in accordance with section 125(f) of the act.

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by any one of those consumers shall be effective as to all consumers.

(b) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind the transaction.

(3) The way to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission as described in paragraph (d) of this section.

(5) The date of expiration of the rescission period.

(c) *Delay of creditor's performance.* Unless a consumer waives the right of recission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) *Effects of rescission.* (1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void. A consumer who rescinds a transaction shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may keep it until the creditor has met its obligations under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, pay its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. If the creditor does not take the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (d)(3) of this section may be modified by court order.

(3) *Consumer's waiver of right to rescind.* The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind and bears the signatures of all of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) *Exempted transactions.* The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. If the new amount financed exceeds the unpaid principal balance plus any earned unpaid finance charge on the existing debt, this exemption applies only to the existing debt and its security interest.

(3) A transaction in which a federal or state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under § 226.17(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

§ 226.24 Advertising.

(a) *Actually available terms.* If an advertisement for consumer credit states specific credit terms, it shall state only those terms that the creditor actually arranges or offers.

(b) *Advertisement of rate of finance charge.* If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(c) *Advertisement of terms that trigger additional disclosures.* (1) If any of the following terms is set forth in or otherwise determinable from an advertisement, the advertisement shall meet the requirements of paragraph (c)(2) of this section:

(i) The amount or percentage of any downpayment.

(ii) The number of payments or period of repayment.

(iii) The amount of any payment.

(iv) The amount of any finance charge.

(2) An advertisement stating any of the terms in paragraph (c)(1) of this

[46] For the purpose of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor must deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice will trigger the rescission period.

[47] "Material disclosures" means the required disclosure of the annual percentage rate, the finance charge, the amount financed, the total of payments and the number, amount and timing of payments scheduled to repay the obligation.

section shall state the following terms,[48] as applicable:

(i) The amount or percentage of the downpayment.

(ii) The terms of repayment.

(iii) The "annual percentage rate," using that terms, and, if the rate may be increased after consummation, that fact.

(d) *Catalogs and multiple-page advertisements.* (1) If a catalog or other multiple-page advertisement gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragrpah (c)(2) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly set forth; and

(ii) Any statement of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page on which the table or schedule begins.

(2) A catalog or multiple-page advertisement complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Subpart D—Consumer Leasing

§ 226.25 Definitions.

(a) Definitions that apply to the entire regulation are located in § 226.2.

(b) The following definitions apply solely to consumer leasing:

"Arrange for a lease" means to offer a consumer lease to be extended by another person if the person who offers to arrange the lease receives compensation for that service or participates in preparing the lease contract with knowledge of its terms.

"Consumer lease" means an obligation in the form of a bailment or lease for the use of personal property by a consumer primarily for personal, family, or household purposes, for an original term of more than 4 months, for a total lease obligation not exceeding $25,000, whether or not the consumer has the option to purchase or otherwise become the owner of the property at the end of the lease term. A lease that meets the definition of a "credit sale" is not a consumer lease for purposes of this definition.

"Lessor" means a person who more than 25 times in a year leases or arranges for a lease.

"Realized value" means:

(1) The price received by the lessor for the leased property at disposition;

(2) The highest offer for disposition; or

(3) The fair market wholesale or retail value at the end of the lease term if the use of wholesale or retail value is consistent with the estimated value made at consummation.

"Total lease obligation" means the sum of:

(1) The scheduled periodic payments under the lease;

(2) Any nonrefundable cash payment required of the consumer or agreed upon by the lessor and consumer or any trade-in allowance made at consummation; and

(3) The estimated value of the leased property at the end of the lease term.

"Value of property at consummation" means the cost to the lessor of the leased proerty, including, if applicable, any increase or markup by the lessor prior to consummation.

§ 226.26 Disclosures.

(a) *Time and form of disclosures.* (1) The lessor shall make the disclosures before consummation of the transaction.

(2) The discolusres shall be made clearly and conspicuously in a dated written form that the consumer may keep, either on the lease contract or on a separate document. The document may, but need not, include an acknowledgement of receipt.

(b) *Basis of disclosures and use of estimates.* (1) The lessor shall base the disclosures on the information known to it at the time disclosures are made. The disclosures shall be based on the assumption that the consumer will comply with the terms of the legally enforceable obligation between the parties.

(2)(i) When any information necessary to make an accurate disclosure is unknown to the lessor, it shall make the disclosure based on the best information reasonably available to it and shall state that the disclosure is an estimate.

(ii) In a purchase option lease, a lessor may understate the estimated value of the leased property when it computes the total lease obligation required in paragraph (f)(2)(i) of this section.

(3) The lessor may disregard the effects of the following in making all calculations and required disclosures:

(i) That payments must be collected in whole cents;

(ii) That dates of scheduled lease payments may be changed because the scheduled date is not a business day;

(iii) That months have different numbers of days; and

(iv) The occurrence of leap year.

(c) *Multiple lessors; multiple consumers.* When a lease involves more than one lessor, only one lessor need make all the disclosures, and only one complete set of disclosures need be given. When there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the lease.

(d) *Effect of subsequent events.* If a disclosure is rendered inaccurate as a result of an event that occurs after delivery of the disclosures, the resulting inaccuracy is not a violation of this regulation. When the event occurs after consummation, the lessor shall refer to paragraph (g) of this section to determine whether new disclosures are required.

(e) *Content of disclosures.* Each consumer lease shall disclose the following information, as applicable:

(1) *Consumer.* The identity of the consumer receiving the disclosures.

(2) *Lessor.* The identity of the lessor making the disclosures.

(3) *Leased property.* A brief description of the leased property that sufficiently identifies it.

(4) *Initial payments.* A brief description of every payment made or to be made by the consumer either at or prior to delivery of the leased property, and the total amount of all such payments.

(5) *Periodic payments.* The number, amounts, and timing of periodic lease payments, and the total amount of such payments.[49]

(6) *Official charges.* The total amount of charges payable by the consumer during the lease term for official fees, registration, certificate of title, licenses, or taxes. The lessor may omit the charges that are disclosed under paragraphs (e)(4) and (e)(5) of this section.

(7) *Other charges.* All other charges that are payable by the consumer to the lessor but not included in the periodic lease payments, individually itemized, and the total of such charges. The lessor may omit the charges that are disclosed under paragraphs (e)(4), (e)(5), and (e)(6) of this section.

(8) *Insurance.* A brief description of the types and amounts of insurance that are required by, paid by, or obtained from the lessor, other than insurance procured by the lessor for its own benefit. If the insurance is obtained from or paid by the lessor, the description shall include the cost to the consumer.

[48] An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used in complying with this requirement.

[49] If the amount of any payment in a series is not more than 5 percent larger than the smallest payment in that series, the lessor may treat all payments in the series as equal by disclosing the largest payment amount, labeled as an estimate.

(9) *Warranties.* A statement identifying any express warranties or guarantees that are made by the lessor or manufacturer and are available to the consumer.

(10) *Maintenance.* A statement identifying the person responsible for maintaining or servicing the leased property and a brief description of the responsibilities.

(11) *Wear and use standards.* A statement of reasonable standards for wear and use, if the lessor sets such standards.

(12) *Security interest.* A statement that the lessor has taken or will take a security interest in connection with the lease (other than a security deposit disclosed under paragraph (e)(4) of this section) and a brief description of the property to which it relates.

(13) *Default charges.* The amount (or method of determining the amount) of any penalty or other charge, other than a deferral or extension charge, for default, delinquency, or late payments.

(14) *Purchase option.* A statement of whether or not the consumer has the option to purchase the leased property and, if applicable, the option times and prices or the method of determining the prices.

(15) *Early termination.* A statement of the conditions under which the consumer or the lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(f) *Special disclosures concerning consumer's liability on termination of lease.* (1) When the consumer's liability at early termination is affected by the realized value of the leased property, or when the consumer's liability at the end of the lease term is based on the estimated value of the leased property, in addition to the disclosures under paragraph (e) of this section, the lessor shall disclose the following information, as applicable:

(i) A statement explaining the effect of the realized value of the leased property on the consumer's liability at early termination, or a statement that the consumer shall be liable for the difference between the estimated value of the leased property and its realized value at the end of the lease term; and

(ii) A statement that the consumer may obtain, at the consumer's expense, a professional appraisal of the value which could be realized at sale of the leased property. The statement shall indicate that the appraisal must be made by an independent third party agreed to by the consumer and the lessor, and that such an appraisal is final and binding on both parties.

(2) When the consumer's liability at the end of the lease term is based on the estimated value of the leased property, the following items shall be disclosed:

(i) The value of the property at consummation of the lease, the itemized total lease obligation, and the difference between them;

(ii) A statement that the estimated value of the leased property is presumed to be unreasonable, and not in good faith, to the extent that it exceeds the realized value by more than three times the average lease payment allocable to a monthly period, and a statement that the lessor cannot collect the excess amount unless it rebuts the presumption of unreasonableness in a successful court action in which it pays the consumer's attorney's fees;

(iii) A statement that the rules concerning presumption and attorney's fees do not apply to the extent that the excess of estimated value over realized value is due to unreasonable wear or use, or to excessive use; and

(iv) A statement that the requirements of paragraph (f)2)(ii) of this section do not preclude the right of a willing consumer to enter into any mutually agreeable final adjustment regarding excess liability, provided such agreement is reached after the end of the lease term.

(g) *Renegotiation requiring new disclosures.* A renegotiation occurs when an existing lease is satisfied and replaced by a new consumer lease undertaken by the same consumer. A renegotiation is a new lease requiring new disclosures to the consumer. The subsitution or addition of one or more items in a multiple-item lease is not a renegotiation if the average lease payment allocable to a monthly period is not changed by more than 25 percent.

(h) *Extensions.* (1) A lessor that extends or permits a consumer to extend the duration of a consumer lease for one month or less shall comply with § 183(a) of the act, and calculate the consumer's liability on the basis of the estimated value of the leased property disclosed under paragraph (f) of this section.

(2) A lessor that extends or permits a consumer to extend the duration of a lease for more than one month shall:

(i) Comply with § 183(a) of the act and, when the leased property is returned, reduce the estimated value of the leased property that was disclosed under paragraph (f) by an amount that reflects the depreciation resulting from the extension;[50] or

(ii) Treat the extension as a renegotiation under paragraph (g).

§ 226.27 Advertising.

(a) *Actually available terms.* If an advertisement states specific consumer lease terms, it shall state only those terms that the lessor actually arranges or offers.

(b) *Advertisement of terms that require additional disclosures.* Except as provided in paragraph (c) of this section, if an advertisement states the amount of any payment, the number of required payments, or whether or not any payment is required to be made at consummation of the lease, it shall also state, by using one or more examples of typical consumer leases, the following information:

(1) That the transaction advertised is a lease;

(2) The total amount of any payment required to be made at or prior to delivery of the leased property, or that no such payment is required;

(3) The number, amounts, and timing of periodic lease payments and the total of such payments;

(4) Whether or not the consumer has the option to purchase the leased property; and, if applicable, the option times and prices or the method of determining the prices; and

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes on the consumer at the end of the lease term, including a statement that the consumer shall be liable for any difference between the estimated value of the property and its realized value at the end of the lease term, if such liability exists.

(c) *Multiple-item leases; merchandise tags.* A merchandise tag for an item normally included in a multiple-item lease need not comply with paragraph (b) of this section if it refers to a sign or display, posted in the lessor's showroom, that contains a table or schedule of the items required to be disclosed under paragraph (b) of this section.

(d) *Catalogs and multiple-page advertisements.* (1) If a catalog or other multiple-page advertisement provides information in a table or schedule of lease terms in sufficient detail to permit determination of the disclosures required by this section, it shall be considered a single advertisement, provided:

(i) The table or schedule is clearly set forth; and

[50] The lessor may, but need not, use the following simple method to determine the reduced estimated value. Assuming that a portion of each periodic payment reflects the depreciation of the property that correlates with the original estimated value, the lessor may subtract the depreciation portion of each periodic payment made during the extension from the original estimated value.

(ii) Any statement of lease terms appearing elsewhere in the catalog or advertisement clearly refers to the page on which the table or schedule begins.

(2) A catalog or multiple-page advertisement complies with paragraph (b) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly leased higher priced property offered.

Subpart E—Miscellaneous

§ 226.28 Record retention.

(a) *General rule.* A creditor or lessor shall retain evidence of compliance with this regulation, including information sufficient to reconstruct the required disclosures, for a period of two years after the date the disclosures are required to be made. The administrative agencies responsible for enforcing the regulation may require creditors and lessors under their jurisdiction to retain records for a longer period where necessary to carry out their enforcement responsibilities under section 108 of the act.

(b) *Recordkeeping methods.* Evidence of compliance may be retained by use of microfilm, microfiche, or any other method designed to reproduce records accurately.

(c) *Inspection of records.* A creditor or lessor shall permit the agency responsible for enforcing this regulation with respect to that creditor or lessor to inspect its relevant records for compliance.

§ 226.29 Use of annual percentage rate in oral disclosures.

In an oral response to an inquiry by a consumer about the cost of credit, only the corresponding annual percentage rate or rates shall be stated for open-end transactions, except that the periodic rate or rates may also be stated. With respect to oral responses regarding closed-end credit only the annual percentage rate shall be stated, except that where a simple annual rate or periodic rate is applied to an unpaid balance, that rate may also be stated.

§ 226.30 Spanish language disclosures.

All required disclosures under this regulation shall be made in the English language, except in the Commonwealth of Puerto Rico, where, at the creditor's option, disclosures may be made in the Spanish language. If Spanish disclosures are made, English disclosures shall be provided upon the consumer's request, either in substitution for or in addition to the Spanish disclosures, except that this requirement shall not apply to advertisements of credit or lease transactions subject to this regulation.

§ 226.31 Effect on state laws.

(a) *Inconsistent disclosure requirements.* (1) A state law that is inconsistent with Subparts B (open-end credit), C (closed-end credit), and D (consumer leasing) is preempted to the extent of the inconsistency. Any state-required term or manner of disclosure determined by the Board to be inconsistent shall not be used by a creditor in making disclosures under these subparts. A state law is inconsistent, and is preempted, if the creditor or lessor cannot comply with that law without violating Subparts B, C, or D. If a creditor or lessor can comply with a state law without violating Subparts B, C, or D, the state law is not inconsistent with this regulation. A creditor, lessor, state, or other interested party may request the Board to determine whether a state law is inconsistent.

(2) A state law that is more protective than the provisions of §§ 226.6(d), 226.7(1), 226.9(a), 226.10 and 226.11, paragraphs (b)(4) and (c) through (f) of § 226.12, § 226.13, § 226.21, and Subpart D (consumer leasing) is not inconsistent with this regulation.

(b) *Equivalent disclosure requirements.* If the Board determines that a disclosure required by state law, other than a disclosure relating to the finance charge or annual percentage rate, is substantially the same in meaning as a disclosure required under the credit provisions of Subparts B and C of this regulation, creditors in that state may make the state law disclosure in lieu of the disclosure required by this regulation. A creditor, state or other interested party may request the Board to determine whether a state-required disclosure is substantially the same in meaning as a disclosure required by this regulation.

(c) *Request for determination.* (1) A request for a determination under this section shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

(2) A request for a determination shall include each of the following items:

(i) The text of the state statute, regulation, or other document that is the subject of the request;

(ii) Any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies the relevant provision;

(iii) A comparison of the state law provision with the corresponding provision of this regulation, including a full discussion of the basis for the requesting party's belief that the state provision is either inconsistent or substantially the same; and

(iv) Any other information that the requesting party believes may assist the Board in its determination.

(3)(i) Any request for a determination will be published, with an opportunity for public comment, in the **Federal Register**, unless the Board finds that the time required for prior notice and opportunity for comment would be contrary to the public interest and publishes its reasons for such decision.

(ii) Subject to the Board's rules regarding availability of information (Title 12, Part 261 of the Code of Federal Regulations), all requests made under this section, including any documents and other material submitted in support of the requests, will be made available for public inspection and copying.

(4) Any determination by the Board as to the inconsistency of a state law shall become effective on October 1. If the Board's determination is published in the **Federal Register** after April 1, the effective date of such determination shall be October 1 of the following year. The Board, at its discretion, may lengthen the period of time for creditors or lessors to adjust their forms to accommodate the Board's determination. Any creditor or lessor may comply with the disclosure requirements as determined by the Board prior to the effective date of the determination.

Appendix A—State Exemptions

I. General rule

Any state may apply to the Board to exempt any class of transactions within the state from the requirements of Chapter 2 (Credit Transactions), Chapter 4 (Credit Billing), or Chapter 5 (Consumer Leases) of the act and the corresponding provisions of the regulation.

The Board will grant an exemption if it determines that the state law is substantially similar to the requirements of the act and regulation or, in the case of Chapters 4 or 5, the consumer is afforded greater protection under state law than under the federal act and regulation, and there is adequate provision for enforcement.

II. Procedures

The procedures under which a state may apply for an exemption under this section are set forth as follows:

(A) Disclosure and rescission requirements (§§ 121–131 of Chapter 2), § 226.50;

(B) Issuance of unsolicited credit cards and liability for unauthorized use §§ 132–133 of Chapter 2), § 226.60;

(C) Fair credit billing requirements (§§ 161–171 of Chapter 4), § 226.70.

(D) Fair credit billing requirements (§§ 181–186 of Chapter 5), § 226.80.

Any determination under this section shall become effective on October 1. If the Board's

determination is published in the **Federal Register** after April 1, the effective date of such determination shall be October 1 of the following year. The Board, at its discretion, may lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate the Board's determination. Any creditor or lessor may comply with the disclosure requirements as determined by the Board prior to the effective date.

III. Civil liability

No exemptions granted under this section shall extend to the civil liability provisions of sections 130 and 131 of the act. To the extent that an exemption has been granted, the disclosures required under the applicable state law (except any additional requirements not imposed by this regulation) shall satisfy the disclosures required under this act.

IV. Exemptions granted

Section 226.55 lists the states that have been granted exemptions and identifies the classes of credit transactions covered by the exemptions.

Appendix B—Issuance of Staff Interpretations

I. Official staff interpretations

Each official in the Board's Division of Consumer and Community Affairs is authorized, in that official's discretion, to issue official staff interpretations of this regulation. Official staff interpretations provide the formal protection afforded under section 130(f) of the act.

II. Procedure for issuance of official staff interpretations

A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

If an official staff interpretation is appropriate, it will be published for comment in the **Federal Register**. After opportunity for public comment, an official staff interpretation will become effective upon republication in the **Federal Register**.

III. Scope of interpretations

No staff interpretations will be issued approving creditors' or lessors' forms, statements, calculation tools, or methods. This restriction does not apply to forms, statements, tools, or methods whose use is required or sanctioned by a government agency.

Appendix C—Provisions Applicable to Card Issuers That Bill Consumers on a Transaction-by-Transaction Basis

The following provisions of Subpart B apply where credit cards are issued and (1) the card issuer and the seller are the same person or related persons; (2) no finance charge is imposed; and (3) consumers are billed in full for each use of the card on a transaction-by-transaction basis, by means of an invoice or other statement reflecting each use of the card and (4) no cumulative account is maintained which reflects the transactions by each consumer during a period of time, such as a month:

(i) *Section 226.6(d), and, as applicable, §§ 226.6(b) and (c).* The disclosure required by § 226.6(b) shall be limited to those charges that are or may be imposed as a result of the deferral of payment by use of the card, such as late payment or delinquency charges.

(ii) *Sections 226.7(b) and 226.7(1).* The required disclosures may be achieved by placing the disclosures on the invoice or statement sent to the consumer for each transaction.

(iii) *Section 226.9(a).* Compliance with § 226.9(a) may be achieved by mailing or delivering the statement required by § 226.6(d) to each consumer receiving a transaction invoice during a one-month period chosen by the card issuer or by sending either the statement prescribed by § 226.6(d) or an alternative billing error rights statement substantially similar to that in Appendix F, with each invoice sent to a consumer.

(iv) *Section 226.9(c).*

(v) *Section 226.10.*

(vi) *Section 226.11.* This section would apply when a card issuer receives a payment or other credit that exceeds by more than $1 the amount due, as shown on the transaction invoice. The requirement to credit amounts to an account may be complied with by other reasonable means, such as by a credit memorandum. Since no periodic statement is provided or required for the credit card system subject to this interpretation, a notice of excess payment shall be sent to the consumer within a reasonable period of time following its occurence unless a refund of the excess payment is mailed or delivered to the consumer within five business days of its receipt by the card issuer.

(vii) *Section 226.12 including §§ 226.12(c) and (d), as applicable.* Section 226.12(e) is inapplicable.

(viii) *Section 226.13, as applicable.* All references to "periodic statement" shall be read to indicate the invoice or other statement for the relevant transaction. All actions with regard to corrections and adjusting a consumer's account may b taken by issuing a refund or a new invoice, or by other appropriate means consistent with the purposes of the section.

Appendix D—Multiple Advance Construction Loans

Section 226.17(c)(6) permits creditors to treat multiple advance loans to finance construction of a dwelling that may be permanently financed by the same creditor either as a single transaction or as two transactions. If the actual schedule of advances is not known, the following methods may be used to estimate the interest portion of the finance charge and the annual percentage rate and to make disclosures. If the creditor chooses to disclose the construction phase separately, whether interest is payable periodocially or at the end of construction, Part I may be used. If the creditor chooses to disclose the construction and the permanent financing as one transaction, Part II may be used.

Part I—Construction period disclosed separately

A. If interest is payable only on the amount actually advanced for the time it is outstanding:

1. Estimated interest—Assume that one-half of the commitment amount is outstanding at the contract rate for the entire construction period.

2. Estimated annual percentage rate—Assume a single payment loan that matures at the end of the construction period. The finance change is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule—The number and amounts of any interest payments may be omitted in disclosing the payment schedule under § 226.18(g). The fact that interest payments are required and the timing of such payments shall be disclosed.

4. Amount financed—The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

B. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement:

1. Estimated interest—Assume that the entire commitment amount is outstanding at the contract interest rate for the entire construction period.

2. Estimated annual percentage rate—Assume a single payment loan that matures at the end of the construction period. The finance charge is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule—Interest payments shall be disclosed in making the repayment schedule disclosure under § 226.18(g).

4. Amount financed—The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

Example:

Assume a $50,000 loan commitment at 10.5% with a 5 month construction period and a prepaid finance charge of 2 points.

	(A)	(B)
Estimated interest:	$25,000×.105÷12×5=$1,093.75	$50,000×.105÷12×5=$2,187.50
Estimated APR:	$\frac{(1{,}093.75+\$1{,}000)\times 100}{(\$25{,}000-\$1{,}000)}\div 5\times 12=$	$\frac{(\$2{,}187.50+\$1{,}000)\times 100}{(\$25{,}000-\$1{,}000)}\div 5\times 12=$
	20.94 pct	31.88 pct

Disclosures:		
Principal amount of loan	$50,000	$50,000
Prepaid finance charge	$1,000	$1,000
Amount financed	$49,000	$49,000
Finance charge (estimate)	$2,093.75	$3,187.50
APR (estimate) (percent)	20.94	31.88
Repayment: One payment of principal of $50,000 on 12-12-80. Interest on the amount of credit outstanding will be paid monthly.		Four monthly payments of $437.50, beginning 8-12-80, and a final payment of $50,437.50 on 12-12-80.
Total of payments (estimate)	$51,093.75	$52,187.50

Part II—Construction and permanent financing disclosed as one transaction.

A. The creditor shall estimate the interest payable during the construction period to be included in the total finance charge as follows:

1. If interest is payable only on the amount actually advanced for the time it is outstanding, assume that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period.

2. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement, assume that the entire commitment amount is outstanding at the contract rate for the entire construction period.

B. the creditor shall compute the estimated annual percentage rate as follows:

1. Estimated interest payable during the construction period shall be treated for computation purposes as a prepaid finance charge (although it shall not be treated as a prepaid finance charge for disclosure purposes).

2. The number of payments shall not include any payments of interest only that are made during the construction period.

3. The first payment period shall consist of:

a. For loans made under paragraph A.1. of Part II, one-half of the construction period plus the time between the end of the construction period and the first amortization payment.

b. For loans made under paragraph A.2. of Part II, entire construction period plus the time between the end of the construction period and the first amortization payment.

C. The creditor shall disclose the repayment schedule as follows:

1. For loans under paragraph A.1. of Part II, without reflecting the number or amounts of payments of interest only that are made during the construction period. The fact that interest payments must be made and the timing of such payments shall be disclosed.

2. For loans under paragraph A.2. of Part II, including any payments of interest only that are made during the construction period.

D. The creditor shall disclose the amount financed as the entire commitment amount less any prepaid finance charge.

Example:

Assume a $50,000 loan commitment at 10.5% with a 5 month construction period and a prepaid finance charge of 2 points, followed by 30-year permanent financing at the same rate with monthly amortization payments of $457.37.

Appendix D

[Computation of estimated APR]

		Interest on amount advanced	Interest on entire commitment	
Estimated construction interest=$25,000×.105÷12×5		=$1,093.75	$50,000×.105÷12×5=$2,187.50	
Estimated total finance charge=360×$457.37	=$164,653.20		$164,653.20	
Principal	−$50,000.00		−$50,000.00	
Interest on permanent finance	$114,653.20		$114,653.20	
Construction interest	+$1,093.75		+$2,187.50	
Points	+$1,000.00	$116,746.95	+$1,000.00	$117,840.70
Estimated amount financed=				
Principal	$50,000.00		$50,000.00	
Construction interest	−$1,093.75		−$2,187.50	
Points	−$1,000.00	$47,906.25	−$1,000.00	$46,812.50
Number of payments		360		360
Payment amount		$457.37		$457.37
First payment period ((5÷2)+1)		3½ mo	(5+1)	6 mo
Estimated APR (actuarial) (percent)		10.75		10.76
Estimated APR (volume I):	$11,674,695 / $47,906.25	=$243.70=FC/$100	$11,784,070 / $46,812.50	=$251.73=FC/$100
First period adjustment=3 mo, 15 days=+5.0. Using 365 payment line, the figure closest to $243.70 is $247.00, which corresponds to an APR of 11 pct.			First period adjustment=6 mo=+10.0. Using 370 payment line, the figure closest to $251.73 is $251.17, which corresponds to an APR of 11 pct.	

Disclosures

Principal amount of credit	$50,000	$50,000
Prepaid finance charge	$1,000	$1,000
Amount financed	$49,000	$49,000
Finance charge (estimate)	$116,746.95	$117,840.70
Annual percentage rate (estimate) (percent)	10.75	10.76
Repayment: Interest on the amount of credit outstanding during the construction period will be paid monthly, followed by 360 monthly payments of $457.37, beginning 1-12-81.		Five monthly payments of $437.50 beginning 8-12-80, followed by 360 monthly payments of $457.37 beginning 1-12-81.
Total of payments (estimate)	$165,746.95	$166,840.70

Appendix E—Annual Percentage Rate Computations for Certain Open-End Credit Plans

In determining the denominator of the fraction under § 226.14(c)(2)(iii)(B), no amount will be used more than once when adding the sum of the balances[1] to which periodic rates apply to the sum of the amounts financed to which specific transaction charges apply. In every case the full amount of transactions to which specific transaction charges apply shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance to which a periodic rate is applied, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none. A specific transaction of $100 occurs at midpoint of the billing cycle. The average daily balance is $100. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance to which the periodic rate applies exceeds the amount of specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½%) multiplied by 12 (the number of months in a year), i.e., 54%.

2. Previous balance—$100. A specific transaction of $100 occurs at midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance to which the periodic rate applies exceeds the amounts of specific transactions (such excess in this case is $50), totaling $150.

As explained in example 1, the annual percentage rate is 3½% x 12=42%.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance to which only the periodic rate is applicable, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼% x 12 = 27%.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the customer made a payment of $50 at midpoint of billing cycle, the numerator is $3.75 and the deominator is $150 (the amount of the transaction $100, plus the balance to which the periodic rate is applicable, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½% x 12=30%.

[1] Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase "sum of the balances" shall also mean the "average of daily balances."

5. Previous balance—$100. A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½% applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. the ominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1⅔% x 12=20%.

6. Previous balance—none. A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3% of the transaction amount of $3.00. The periodic rate is 1½% per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($100) plus the amount of the transaction ($0). Note that in this situation, where the transaction amount exceeds the balance, the resulting number is considered to be zero rather than a negative number (50−100=−50). The denominator is thus $100. The resulting annual percentage rate is 3¾% x 12=45%.

Appendix F—Open-End Model Disclosure Forms and Clauses

Section F(1)—Disclosures Regarding Balance Computation Methods
Section F(2)—Long Form Billing Error Rights Statement
Section F(3)—Alternative Billing Error Rights Statement
Section F(4)—Notice Regarding Liability for Unauthorized Use
Section F(5)—Notice of Right to Rescind (At Time of Each Transaction)
Section F(6)—Notice of Right to Rescind (At Time of Opening Account)
Section F(7)—Notice of Right to Rescind (At Time of an Increase in Credit Limit)

Section F(1)—Disclosures regarding Balance Computation methods (§§ 226.6(a)(3) and 226.(f))

(a) *Adjusted balance method.* The balance to which the periodic rate is applied in calculating the finance charges is the total amount you owe us at the end of one billing period [excluding any part of that amount that represents a finance charge], less all payments and credits we receive before the end of the next billing period.

(b) *Previous balance method.* The balance to which the periodic rate is applied in calculating the finance charges is the total amount you owe us at the end of each billing period [excluding any portion of that amount that represents a finance charge].

(c) *Average daily balance method (excluding current transactions).* The balance to which the periodic rate is applied in calculating the finance charges is the sum of the actual amounts owning each day of the billing period, not including transactions first charged to your account during the period [and not including any portion of the actual amount that is a finance charge], divided by the total number of days in the billing period.

(d) *Average daily balance method (including current transactions).* The balance to which the periodic rate is applied in calculating the finance charges is the sum of the actual amounts owning each day of the billing period, including transactions first charged to your account during the period [but not including any portion of the actual amount that is a finance charge], divided by the total number of days in the billing period.

Section F(2)—Long Form Billing Error Rights Statement (§ 226.6(d))

YOUR BILLING RIGHTS

KEEP THIS NOTICE FOR FUTURE USE.

This notice contains *important information* about your rights and our responsibilities under the Fair Credit Billing Act.

IN CASE OF ERROR OR QUESTIONS ABOUT YOUR BILL

1. *Notifying us of an error or question.* Send your question in writing (at the creditor's option: on a separate sheet) to the address listed on your bill after the words: "Send Inquiries To:" (or similar wording). [Alternate first sentence: Write to us at (address).) Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the FIRST bill on which the error or problem occurred. You can telephone, but doing so *will not* preserve your rights.

In your letter give us the following information:

*Your name and account number.

*The dollar amount involved in the suspected error.

Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized automatic payment of credit card bills from your savings or checking account with us, you can stop payment on any amount you think is wrong. In order to exercise this right your letter must reach us three business days before the automatic debit is scheduled to occur.

2. *Your rights and our responsibilities after we receive your written notice.* We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days we must either correct the error or explain why we believe the bill was correct.

After we have received your letter, we cannot try to collect any amount you are questioning, or report you to a credit bureau as delinquent because of the questioned amount. We can continue to bill you for the amount you are questioning, including any finance charges that would normally be imposed, and can apply any questioned amount that you have not paid against your credit limit. You do not have to pay any amount in question while we are investigating, however you do remain obligated to pay the parts of your bill not in question.

If we determine that we made a mistake on your bill, you will not have to pay any finance charges on any questioned amount. If we haven't made a mistake, you may have to pay finance charges on any amount in question and you will have to make up any missed required payments on the questioned amount. In either case we will send you a statement of the amount you owe, and when it is due.

If you fail to pay the amount that we conclude is owing, we may report you as delinquent to credit bureaus and other creditors. *However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay we must tell those credit bureaus and other creditors of your dispute and tell you specifically which credit bureaus and other creditors we have contacted.* Once the matter has been settled between us, we must inform those to whom we reported you as delinquent.

If we don't follow these rules, we can't collect the first $50 of the disputed amount including finance charges, even if your bill was correct.

SPECIAL RULE FOR CREDIT CARD PURCHASES

If you have a problem with the quality of property or services purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on them. There are two limitations on this right:

(a) You must have made the purchase in your home State or, if not within you home State, within 100 miles of your current mailing address; and

(b) The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

Section F(3)—Alternative Billing Error Rights Statement (§ 226.9(a))

BILLING RIGHTS SUMMARY IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL

Write us at [address] as soon as you can, if you think your bill is wrong or if you need more information about a transaction on your bill. We must hear from you no later than 60 days after we sent you the FIRST bill on which the error or problem occurred. You can telephone, but doing so *will not* preserve your rights.

In your letter give us the following information:

*Your name and account number.

*The dollar amount of the suspected error.

*Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, however you do remain obligated to pay the parts of your bill not in question. While investigating we cannot report questioned amounts as delinquent or take any action to collect those amounts.

SPECIAL RULE FOR CREDIT CARD PURCHASES

If you have a problem with the quality of goods or services purchased with a credit card and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on them. You have this protection only when the purchase price was more than $50 and the purchase occurred in your home State or within 100 miles of your mailing address. (If we own or opreate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

Section F(4)—Notice Regarding Liability for Unauthorized Use (§ 226.12(b)(2))

You may be liable for the unauthorized use of your credit card (or other term that describes the credit card). You will not be liable for unauthorized use that occurs after you notify (name of card issuer or its designee) orally or in writing of loss, theft, or possible unauthorized use. In any case, you liability shall not exceed (insert $50 or any lesser amount under other applicable law or under any agreement with the cardholder.)

Section F(5)—Notice of Right to Rescind (at Time of Each Transaction)(§ 226.15(a)(1)(i))

Notice of Right to Cancel

1. *Your right to cancel.* You have agreed with us on (date) to an extension of credit under your open-end credit account. This extension of credit will result in an increase in the amount of credit outstanding on your open-end credit account which is secured by a mortgage, lien, or other security interest in your home. You have a legal right under federal law to cancel this extension of credit without cost, within three business days after the above date or any later date on which you received a copy of the material Truth in Lending disclosures or this notice of your right to cancel.

If you cancel the extension of credit any additional security interest taken as a result of the extension of credit is also cancelled. Within 20 calendar days of receiving your notice, we must take the steps necessary to reflect the fact that any additional security interest in your home has been cancelled and we must return to you any money or property you have given to us or to anyone else in connection with this extension of credit. If we have given you any money or property, you may keep it until we have performed our obligations. You must then offer to return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. You may make the offer at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. *How to cancel.* If you decide to cancel this extension of credit, you may do so by notifying us, in writing, at (creditor's name and business address). You may use any written statement that is signed and dated to cancel this extension of credit. You may use this notice by dating and signing below. Retain one copy of this notice regardless of the method you use to cancel since it contains important information about your rights.

If you cancel by mail or telegram, the notice must be sent no later than midnight of (date). If you use any other means to deliver or transmit to us your written notice to cancel, it must be delivered to the above address no later than that time.

I hereby cancel this transaction.

(Consumer's signature) _____

(Date) _____

Name (please print) _____

Address (please print) _____

Section F(6)—Notice of Right to Rescind (At Time of Opening Account)(§ 226.15(a)(1)(ii))

Notice of Right to Cancel

1. *Your right to cancel.* You have agreed with us on (date) to establish an open-end credit account that is to be secured by your home. Opening this account will result in a mortgage, lien, or other security interest in your home. You have a legal right under federal law to cancel this account, without cost, within three business days after the above date or any later date on which you received your initial Truth in Lending disclosures or this notice of your right to cancel.

If you cancel the account, the security interest is also cancelled. Within 20 days of receiving your notice, we must take the steps necessary to reflect the fact that the security interest in your home has been cancelled and we must return to you any money or property you have given to us or to anyone else in connection with this account. If we have given you any money or property, you may keep it until we have performed our obligations. You must then offer to return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. You may make the offer at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 days of your offer, you may keep it without further obligation.

2. *How to cancel.* If you decide to cancel this account, you may do so by notifying us, in writing, at (creditor's name and business address). You may use any written statement that is signed and dated to cancel this account. You may use this notice by dating and signing below. Retain one copy of this notice regardless of the method you use to cancel since it contains important information about your rights.

If you cancel by mail or telegram, the notice must be sent no later than midnight of (date). If you use any other means to deliver or transmit to us your written notice to cancel, it must be delivered to the above address no later than that time.

I hereby cancel this transaction.

(Consumer's signature) _____

(Date) _____

Name (please print) _____

Address (please print) _____

Section F(7)—Notice of Right To Rescind at Time of an Increase in Credit Limit (§ 226.15(a)(1)(ii))

Notice of Right to Cancel

1. *Your right to cancel.* You have agreed with us on (date) to increase the credit limit on your open-end credit account that is secured by your home. Increasing the credit limit will result in an increase in the amount of the mortgage, lien, or other security interest in your home. You have a legal right under federal law to cancel this increase, without cost, within three business days after the above date or any later date on which you received your material Truth in Lending disclosures or this notice of your right to cancel.

If you cancel the increase, the additional security interest is also cancelled. Within 20 calendar days of receiving your notice, we must take the steps necessary to reflect the fact that the additional security interest in your home has been cancelled and we must return to you any money or property you have given to us or to anyone else in connection with this increase. If we have given you any money or property, you may keep it until we have performed our obligations. You must then offer to return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. You may make the offer at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 days of your offer, you may keep it without further obligation.

2. *How to cancel.* If you decide to cancel this increase, you may do so by notifying us, in writing, at (creditor's name and business address). You may use any written statement that is signed and dated to cancel this increase. You may use this notice by dating and signing below. Retain one copy of this notice regardless of the method you use to cancel since it contains important information about your rights.

If you cancel by mail or telegram the notice must be sent no later than midnight of (date). If you use any other means to deliver or transmit to us your written notice to cancel, it must be delivered to the above address no later than that time.

I hereby cancel this transaction.

(Consumer's signature) ———————

(Date) ———————

Name (please print) ———————

Address (please print) ———————

Appendix G—Closed-End Model Forms and Clauses

Section G(1)—Model Sale Disclosure
Section G(2)—Model Loan Disclosure
Section G(3)—Model for the Explanation of the Amount Financed
Section G(4)—Model for Combined RESPA and Truth in Lending Disclosures
Section G(5)—Notice of Right to Rescind
Section G(6)—Disclosures Regarding Variable Rates
Section G(7)—Disclosures Regarding Demand Obligations
Sample I—Sale Disclosure with Explanation of Amount Financed
Sample II—Loan Disclosure
Sample III—Mortgage Disclosure with Explanation of Amount Financed

BILLING CODE 6210-01-M

SECTION G(1)—MODEL SALE DISCLOSURE

(Name of Creditor)

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	FINANCE CHARGE The dollar amount the credit will cost me, if I pay as scheduled. $	Amount Financed The amount of credit provided to me or on my behalf. $	Total of Payments The amount I will have paid when I have made all payments as scheduled. $	Total Sale Price The total cost of my purchase on credit including my down payment of $_____ $

I have the right to receive at this time a written explanation of the Amount Financed.
___ I want an explanation. ___ I do not want an explanation.

My payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due

Insurance
Credit life insurance and disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. _____ Signature
Credit Life and Disability		I want credit life and disability insurance. _____ Signature

Property insurance may be obtained from anyone I desire that is acceptable to the creditor.
If I get the insurance from (creditor) , I will pay $_____.

[Filing fees: $_____] [Non-filing insurance $_____]

Late Charge: I will be charged [$_____] [_____% of the payment] if a payment is not received within _____ days of its due date.

Security: I am giving a security interest in [the goods being purchased.] [and] [(other property.)_____
_____
_____]

Prepayment: If I pay off early I will [not] have to pay the total finance charge. I will [not] have to pay a penalty.

Assumption: Someone buying my home [may be allowed to] [cannot] assume the remainder of the mortgage on the original terms.

I can refer to my contract documents for any additional information they may contain about nonpayment, default, any required repayment of this obligation in full before the scheduled date, and prepayment rebates and penalties.

I have a copy of this statement. _____ Signature _____ Date

e means dollar amount is an estimate.

SECTION G(2)—MODEL LOAN DISCLOSURE

(Name of Creditor)

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	FINANCE CHARGE The dollar amount the credit will cost me, if I pay as scheduled. $	Amount Financed The amount of credit provided to me or on my behalf. $	Total of Payments The amount I will have paid when I have made all payments as scheduled. $

I have the right to receive at this time a written explanation of the Amount Financed.
___ I want an explanation. ___ I do not want an explanation.

My payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due

Insurance
Credit life insurance and disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. _____ Signature
Credit Life and Disability		I want credit life and disability insurance. _____ Signature

Property insurance may be obtained from anyone I desire that is acceptable to the creditor.
If I get the insurance from (creditor) I will pay $_____.

[Filing fees: $_____] [Non-filing insurance $_____]

Late Charge: I will be charged [$_____] [_____% of the payment] if a payment is not received within _____ days of its due date.

Security: I am giving a security interest in [the goods being purchased.] [and] [(other property.)_____
_____
_____]

Prepayment: If I pay off early I will [not] have to pay the total finance charge. I will [not] have to pay a penalty.

Assumption: Someone buying my home [may be allowed to] [cannot] assume the remainder of the mortgage on the original terms.

I can refer to my contract documents for any additional information they may contain about nonpayment, default, any required repayment of this obligation in full before the scheduled date, and prepayment rebates and penalties.

I have a copy of this statement. _____ Signature _____ Date

_____
e means dollar amount is an estimate.

SECTION G(3)—MODEL FOR THE EXPLANATION OF THE AMOUNT FINANCED

Explanation of Amount Financed of $. _____

$ _____ Amount given to me directly.

$ _____ Amount paid on my account.

$ _____ Amount(s) paid to others on my behalf.

$ _____ to public officials

$ _____ to (name of another creditor)

$ _____ to (name of insurance company)

$ _____ Prepaid finance charge

_____ _____
Signature Date

SECTION G(4)—MODEL FOR COMBINED RESPA AND TRUTH IN LENDING DISCLOSURES

(Lender's Name) (Consumer's Name)

RESPA Good Faith Estimates of Settlement Costs and Explanation of the Amount Financed of $_____

Settlement Statement Line Number	Settlement Service	Prepaid Finance Charge	Charge Included in Amount Financed	Charge Paid in Cash
	TOTALS			

* (Lender) requires that I use the following providers of settlement services in this transaction.
The estimates of my costs are based upon each provider's charges.

Name	Address and Telephone	(Lender) has a business relationship with this provider.

This form includes all settlement service charges I must pay, but it may not cover all items I may have to pay in cash at settlement. I may want to ask about the cost of any items I must pay that are not shown on this form.

The Real Estate Settlement Procedures Act (RESPA) requires that I receive a booklet describing the settlement process and this estimate of costs when I apply for a mortgage loan or within three business days of applying.

BILLING CODE 6210-01-C

Section G(5)—Notice of Right to Rescind (§ 226.23(b))

Notice of Right to Cancel

You are entering into a transaction that may result in a security interest in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days, from whichever of the following three events occurs last.

(1) The date of the transaction, which is ———.

(2) The date you received your Truth in Lending disclosures.

(3) The date you received this notice of your right to cancel.

If you decide to cancel this transaction, you may do so by notifying us in writing, at (creditor's name and business address). You may use any written statement that is signed and dated to cancel this transaction, or you may use one copy of this notice by dating and signing below. You may want to keep the other copy because it contains important information about your rights. If you cancel by mail or telegram, the notice must be sent no later than midnight of (date). If you use any other means to cancel, it must be delivered to the above address no later than that time.

If you cancel the transaction, the security interest is also cancelled. Within 20 calendar days of receiving your notice, we must take the steps necessary to reflect the fact that the security interest in your home has been cancelled and we must return to you any money or property you have given to us or to anyone else in connection with this transaction. If we have given you any money or property, you may keep it until we have performed our obligations. You must then return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. At your option, you may offer to return the property at your home or at the location of the property. Money must be returned to the above address. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

I hereby cancel this transaction.

(Consumer's signature) ————————

(Date) ————————

Section G(6)—Disclosures Regarding Variable Rates (§ 226.18(f))

The annual percentage rate may increase during the term of this transaction under the following conditions:

[An increase in the prime interest rate of this lender]

[My deposit accounts fail to maintain a balance of ————]

[I terminate my employment with ————]

An increase is limited in the following manner:

[The rate will not increase above ——%]

[The maximum increase at one time will be ——%]

Any increase will take the form of:

[Higher payment amounts]

[More payments of the same amount]

[A larger amount due at maturity]

Section G(7)—Disclosures Regarding Demand Obligations (§ 226.18(i))

This obligation [is payable on demand.] [has a demand feature.]

[All disclosures are based on an assumed maturity of one year.]

BILLING CODE 6210-01-M

SAMPLE 1 - SALE DISCLOSURE WITH EXPLANATION OF AMOUNT FINANCED

XYZ Auto, Inc. Glenn Jones

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost me, if I pay as scheduled.	Amount Financed The amount of credit provided to me or on my behalf.	Total of Payments The amount I will have paid when I have made all payments as scheduled.	Total Sale Price The total cost of my purchase on credit including my down payment of $ 1500.00
13.18 %	$1320.38	$6107.50	$7427.88	$8952.88

My payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
36	$206.33	Monthly beginning 6-1-81

Insurance
Credit life insurance and disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life	$120.00	I want credit life insurance. Glenn Jones Signature
Credit Life and Disability		I want credit life and disability insurance. Signature

[Filing fees: $ 12.50]

Late Charge: I will be charged [$ 10-] [X ~~X~~ ~~of the payment~~] if a payment is not received within 10 days of its due date.

Security: I am giving a security interest in [the goods being purchased.] [and] [~~(other property)~~ X X X

SAMPLE II—LOAN DISCLOSURE

FEDERAL BANK & TRUST CO.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost me, if I pay as scheduled.	Amount Financed The amount of credit provided to me or on my behalf.	Total of Payments The amount I will have paid when I have made all payments as scheduled.
10.08 %	$ 540-	$ 5000-	$ 5540-

I have the right to receive at this time a written explanation of the Amount Financed.
___ I want an explanation. X I do not want an explanation.

My payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
1	$250-	June 1, 1981
23	$230-	Monthly beginning July 1, 1981

Insurance
Credit life insurance and disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. Signature
Credit Life and Disability		I want credit life and disability insurance. Signature

Property insurance may be obtained from anyone I desire that is acceptable to the creditor.
If I get the insurance from Federal B & T Co., I will pay $_____.

Late Charge: I will be charged 5 % of the payment if a payment is not received within 15 days of its due date.

Security: I am giving a security interest in [the goods being purchased.] [and] [(other property.)_____]

Prepayment: If I pay off early ~~I will [not] I will not pay the total finance charge~~. I will not have to pay a penalty.

I can refer to my contract documents for any additional information they may contain about nonpayment, default, any required repayment of this obligation in full before the scheduled date, and prepayment rebates and penalties.

e means dollar amount is an estimate.

SAMPLE III—MORTGAGE DISCLOSURE WITH EXPLANATION OF AMOUNT FINANCED

FEDERAL SAVINGS AND LOAN

Janet Smith
Account # 53-4666-69

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost me, if I pay as scheduled.	Amount Financed The amount of credit provided to me or on my behalf.	Total of Payments The amount I will have paid when I have made all payments as scheduled.
13.91 %	$161,786.74	$49,287.33	$207,836.40

My payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
360	$583.99	Monthly beginning June 1, 1981

Insurance
Credit life insurance and disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. Signature
Credit Life and Disability		I want credit life and disability insurance. Signature

Late Charge: I will be charged 5 % of the payment if a payment is not received within 15 days of its due date.

Security: I am giving a security interest in the property being purchased.

Prepayment: If I pay off early ~~I will [not] have to pay the total finance charge~~. I will [not] have to pay a penalty.

Assumption: Someone buying my home cannot assume the remainder of the mortgage on the original terms.

I can refer to my contract documents for any additional information they may contain about nonpayment, default, any required repayment of this obligation in full before the scheduled date, and prepayment rebates and penalties.

I have a copy of this statement. Janet Smith (Signature) 4-15-81 (Date)

e means dollar amount is an estimate.

SAMPLE III—CONTINUED

FEDERAL SAVINGS AND LOAN

Janet Smith
Account # 53-4666-69

RESPA Good Faith Estimates of Settlement Costs and Explanation of the Amount Financed of $ 49,287.33

Settlement Statement Line Number	Settlement Service	Prepaid Finance Charge	Charge Included in Amount Financed	Charge Paid in Cash
801.	Loan Origination Fee (1%)	$500		
803.	Appraisal Fee			$125
804.	Credit Report Fee			$ 20
901.	Interest (15 days)	$287.67		
1101.	Settlement Fee	$ 50		
1107.	Attorney's Fees* (includes 1102. Title Search and 1105. Document preparation)			$200
1108.	Title Insurance		$125	
1201.	Recording Fees			$ 22.50
1203.	State Tax			$125
1301.	Survey			$ 80
	TOTALS	$837.67	$125	$572.50

* Federal S & L requires that I use the following providers of settlement services in this transaction. The estimates of my costs are based upon each provider's charges.

Name	Address and Telephone	Federal Savings and Loan has a business relationship with this provider?
G.L. Griffith	100 Main St., N.Y., N.Y. 10010 (212)555-1213	No

This form includes all settlement service charges I must pay, but it may not cover all items I may have to pay in cash at settlement. I may want to ask about the cost of any items I must pay that are not shown on this form.

The Real Estate Settlement Procedures Act (RESPA) requires that I receive a booklet describing the settlement process and this estimate of costs when I apply for a mortgage loan or within three business days of applying.

BILLING CODE 6210-01-C

Appendix H—Leasing Model Forms

Section H(1)—Model for Open-end or Finance Vehicle Lease Disclosures
Section H(2)—Model for Closed-end or Net Vehicle Lease Disclosures
Section H(3)—Model for Furniture Lease Disclosures

BILLING CODE 6210-01-M

SECTION H(1)--MODEL FOR OPEN-END OR FINANCE VEHICLE LEASE DISCLOSURES

Date_____

1. LESSOR(S) _____ LESSEE(S) _____

2. Description of leased property

Year	Make	Model	Body Style	Vehicle ID #

3. (a) Initial Charges, consisting of
☐ Capitalized Cost Reduction ☐ Trade-in Allowance ☐ _____ $_____

(b) Other Charges Payable at Inception, consisting of
☐ Advance Monthly Payment of _____
☐ Refundable Security Deposit ☐ Delivery Charge
☐ Registration Fees ☐ _____ $_____

Total Payment Due at Inception: $_____

4. (a) Basic Monthly Payment: $_____

(b) Other Charges Payable Monthly:
☐ Maintenance ☐ Registration Fees
☐ Insurance ☐ _____ $_____

Total Monthly Payment: $_____

5. Term of this lease:_____
The first monthly payment of $_____ is due on _____; _____ subsequent payments of $_____ on the _____ of each month thereafter.

6. Total of Basic Monthly Payments: $_____

7. Total of Other Charges Payable to Lessor:
☐ Disposition $_____ ☐ Maintenance $_____
☐ _____ $_____ $_____

8. Fees and Taxes
Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. $_____

9. Insurance
The following types and amounts of insurance will be acquired in connection with this lease:_____
☐ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $_____.
☐ You (lessee) agree to provide insurance coverage in the amounts and types indicated above. $_____

10. Estimated _____ value of the vehicle at the end of the lease term:
(Your liability for this sum may be limited. See Item 14.) $_____

11. Total Lease Obligation:
(Items 3(a), 6 and 10.) $_____

12. Initial Value of Vehicle: $_____

13. Difference:
(Item 11 less Item 12.) $_____

14. End of Term Liability
(a) The estimated value of the vehicle stated in Item 10 is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is *greater* than the estimated value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus].

If the actual value of the vehicle is *less* than the estimated value, you will be liable for any difference up to $_____(3 times Item 4(a)). For any difference in excess of that amount, you will be liable only if

1. Excessive use or damage [as described in Item 15] [representing more than normal wear and tear] resulted in an unusually low value at the end of the term.
2. You voluntarily agree with us after the end of the lease term to make a higher payment.
3. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment.

Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle.

Unless we prove that the excess amount owed was the result of excessive use or unreasonable wear and tear, we will pay your reasonable attorney's fees.

(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

15. Standards for Wear and Use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle:_____

16. Maintenance
[You are responsible for the following maintenance and servicing of the leased vehicle:_____]

[We are responsible for the following maintenance and servicing of the leased vehicle:_____]

17. Warranties
The leased vehicle is subject to the following express warranties:_____

18. Early Termination and Default
(a) You may terminate this lease before the end of the lease term under the following conditions:_____
The charge for such early termination is_____

(b) We may terminate this lease before the end of the lease term under the following conditions:_____
Upon such termination we shall be entitled to the following charge(s) for_____

(c) To the extent these charges take into account the value of the vehicle at the end of the lease term, you have the same right to a professional appraisal as that stated in Item 14(b).

19. Security Interest
We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:_____

20. Late Payments
The charge for late payments is_____

21. Option to Purchase
[You have an option to purchase the leased vehicle at the following times:_____
If at the end of the term, the price will be $_____.
If prior to the end of the term, the price will be $_____]

[You have no option to purchase the leased vehicle.]

SECTION H(2)--MODEL FOR CLOSED-END OR NET VEHICLE LEASE DISCLOSURES

Date_____

1. LESSOR(S) _____ LESSEE(S) _____

2. Description of leased property

Year	Make	Model	Body Style	Vehicle ID #

3. Total Payment Due at Inception:
☐ Capitalized Cost Reduction ☐ Delivery Charge
☐ Trade-in Allowance ☐ Registration Fees
☐ Advance Monthly Payment of_____
☐ Refundable Security Deposit ☐ _____ $_____

4. Term of this lease:_____
The first monthly payment of $_____ is due on_____; _____subsequent payments of $_____on the_____of each month thereafter.

5. Total Monthly Payment: $_____

6. Total of Monthly Payments: $_____

7. Total of Other Charges Payable to Lessor:
☐ Disposition $_____ ☐ Maintenance $_____
☐ _____ $_____ $_____

8. Fees and Taxes
Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. $_____

9. Insurance
The following types and amounts of insurance will be acquired in connection with this lease:_____.
☐ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $_____.
☐ You (lessee) agree to provide insurance coverage in the amounts and types indicated above. $_____

10. Standards for Wear and Use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle:_____.

11. Maintenance
[You are responsible for the following maintenance and servicing of the leased vehicle:_____.]
[We are responsible for the following maintenance and servicing of the leased vehicle:_____.]

12. Warranties
The leased vehicle is subject to the following express warranties:_____.

13. Early Termination and Default
(a) You may terminate this lease before the end of the lease term under the following conditions:_____.
The charge for such early termination is_____.
(b) We may terminate this lease before the end of the lease term under the following conditions:_____.
Upon such termination we shall be entitled to the following charge(s) for_____.
(c) To the extent that these charges take into account the value of the vehicle at the end of the lease term, if you disagree with the value we assign to the vehicle, you may obtain at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the_____value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

14. Security Interest
We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:_____.

15. Late Payments
The charge for late payments is_____.

16. Lessee's Option to Purchase
[You have an option to purchase the leased vehicle at the following times:_____.
If at the end of the term, the price will be $_____.
If prior to the end of the term, the price will be $_____.]
[You have no option to purchase the leased vehicle.]

SECTION H(3)--MODEL FOR FURNITURE LEASE DISCLOSURES

Date_____

1. LESSOR(S) _____ LESSEE(S) _____

2. Description of leased property [is attached].

Item	Color	Stock #	Mfg.	Qty.					

3. Total Payment Due at Inception: $_____
☐ Refundable Security Deposit
☐ Advance Monthly Payment of_____ ☐ Delivery Charge
☐ _____

4. Term of this lease:_____
The first monthly payment of $_____ is due on_____; _____subsequent payments of $_____ on the_____of each month thereafter.

5. Total Monthly Payment: $_____

6. Total of Monthly Payments: $_____

7. Total of Other Charges Payable to Lessor: $_____
☐ Pick-up Charge $_____ ☐ _____ $_____

8. Fees and Taxes
Total amount you will pay during the term for official fees and taxes. $_____

9. Insurance
☐ You (lessee) agree to provide insurance coverage of the following types in the following amounts:_____.
☐ We (lessor) will provide the following types and amounts of insurance coverage:_____.
Total premium cost: $_____
☐ You agree to pay a waiver fee of $_____per month in lieu of insurance.
Total Waiver Fee: $_____

10. Maintenance
[You are responsible for the following maintenance of the leased property:_____.]
[We are responsible for the following maintenance of the leased property:_____.]

11. Warranties
The leased property is subject to the following express warranties:_____.

12. Standards for Wear and Use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased property:_____.

13. Early Termination and Default
(a) You may terminate this lease before the end of the lease term under the following conditions:_____.
The charge for such early termination is_____.
(b) We may terminate this lease before the end of the lease term under the following conditions:_____.
Upon such termination we shall be entitled to the following charge(s):_____.

14. Security Interest
We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:_____.

15. Late Payments
The charge for late payments is_____.

16. Option to Purchase
[You have an option to purchase any or all items of the leased property at the following times:_____.
If at the end of the term, the price will be $_____.
If prior to the end of the term, the price will be $_____.
[You have no option to purchase the leased property.]

BILLING CODE 6210-01-C

Appendix I—Federal Enforcement Agencies

The following list indicates which Federal agency enforces Regulation Z for particular classes of businesses. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency.

National Banks

Consumer Community and Fair Lending and Examination Division, Comptroller of the Currency, Washington, D.C. 20219.

State Member Banks

Federal Reserve Bank serving the district in which the State member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks Insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Creditors Subject to Civil Aeronautics Board

Director, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations

Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, D.C. 20578.

Retail, Department Stores, Consumer Finance Companies, all Other Creditors, and All Nonbank Credit Card Issuers (Creditors operating on a local or regional basis should use the address of the FTC Regional Office in which they operate.) Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Regulatory Analysis of Proposed Revision of Regulation Z

Summary

The draft of revised Regulation Z prepared by staff of the Division of Consumer and Community Affairs would make major changes in the currently existing regulation. These proposed changes arise from two sources: (1) revisions in the regulation necessitated by passage of the Truth-in-Lending Simplification and Reform Act; and (2) staff proposals to simplify the existing regulatory struture further within the limits of discretion granted to the Board by the Truth-in-Lending Act.

The Simplification and Reform Act has resulted in five major kinds of proposed revisions in the regulatory structure: (1) Required disclosures have been reduced in number; (2) creditor compliance has been made easier in a number of ways, especially by providing model forms guaranteeing compliance if used properly; (3) civil liability of creditors has been limited to certain important disclosures; (4) the main burden of compliance enforcement has been shifted away relatively from the kinds of private actions that have contributed to complex rules and court decisions in the past and toward relatively greater reliance on administrative enforcement; and (5) certain complex legal questions that have produced conflicting court decisions in the past have been clarified. Staff efforts to simplify the regulation further have resulted in additional significant kinds of changes designed to: (1) Provide clearer definitions and standards of applicability; (2) make good faith compliance easier by providing for small disclosure tolerances; (3) minimize necessity of disclosures unrelated to credit decisionmaking; (4) allow creditors greater flexibility in preparing disclosures to fit the nature of individual transactions; and (5) eliminate other complexities and ambiguities.

On balance, each of the major proposed changes in the regulatory structure should produce net consumer benefits by substantially reducing regulatory burden without sacrificing important consumer protections. Important consumer disclosures would be retained in the revised regulation, but the complexity of compliance and frequency of changes should be reduced. This should reduce the regulatory burden by reducing legal costs, printing expenses, employee training costs, and programming and computing expenditures. These gains would only be achieved at the expense of start-up costs. It is not possible with currently available data to estimate accurately either the long-term savings or the short-term costs associated with changing to the new requirements, but the available lead time of one year should help minimize the latter. Furthermore, it appears that long run cost reductions should outweigh the start-up costs. In this regard, possibly the most important single contribution of the new regulation is the provision of model forms that guarantee compliance if used properly.

I. Background

Truth in Lending, enacted by Congress as Title I of the Consumer Credit Protection Act of 1968 (Pub. L. 90–321, May 29, 1968), is an important element of Federal consumer protection policy in the credit area. In essence, the various Federal consumer credit protections established by Congress since 1968, including Truth in Lending, might be characterized as combining two general regulatory approaches, although in different combinations. The first approach is disclosure—requiring that certain information be disclosed to consumers in a prescribed manner. Information disclosure is an important ingredient in most Federal consumer credit protections; but it is so essential to some, including Truth in Lending, the Real Estate Settlement Procedures Act (1974), the Home Mortgage Disclosure Act (1975), the Consumer Leasing Act (1976), and the Electronic Funds Transfer Act (1978), that these acts might properly be classified as "information protections." In contrast, the second regulatory approach involves more than disclosure: it involves requiring institutions to do or not do certain things or act in certain ways in their relations with consumers in the marketplace. In these cases disclosures might also be required, but disclosures are subordinate in importance to other elements. As a result, these regulations might be classified better as "behavioral protections" or "market protections." Examples in the credit area include the Fair Credit Reporting Act (1970), the Fair Credit Billing Act (1974), the Equal Credit Opportunity Act (1974 and 1976), and the Fair Debt Collection Practices Act (1977). Each of these acts requires disclosures under certain circumstances, but their requirements governing the market conduct of institutions are more important.

On its face Truth in Lending (TIL) appears to be both a reasonable and simple idea, but in practice the problems have proven to be immense. The House, Senate, and Conference Committee *Reports* expressing the intentions of Congress reveal both the simplicity of the idea and the reason for its operational complexity. According to the Senate *Report:*[1]

> The basic purpose of the Truth-in-Lending bill is to provide a full disclosure of credit charges to the American consumer. The bill does not in any way regulate the credit industry nor does it prescribe ceilings on credit charges. Instead it requires that full

[1] United States Senate, Committee of Banking and Currency, *Truth in Lending 1967, Report to Accompany S.5* (Washington: Government Printing Office, 1967), p. 1.

disclosure of credit charges be made so that the consumer can decide for himself whether the charge is reasonable.

This passage makes it abundantly clear that Congress intended Truth in Lending to be a disclosure law and an information protection rather than a market protection. This notion is re-emphasized in many parts of the Committee *Reports*. However, this passage also reveals the genesis of many later problems with TIL exemplified by the concept of "full disclosure." Rather than concentrating on a few fundamental disclosures, Truth in Lending and Regulation Z have always required a much more extensive list. Apparently drafted under the assumption that more disclosure is necessarily better than less, TIL and Regulation Z have required disclosure of all information that conceivably might be useful to someone sometime. Together with the diversity of consumer credit transactions and the penalties for violating the law or regulation, this principle has contributed substantially to TIL's complexity.

Originally the Truth-in-Lending Act filled more than 13 printed pages in the Conference Committee *Report* and included 30 separate sections. In addition, the original Regulation Z filled 30 pages in 98 separate sections plus a supplement booklet dealing with APR calculations. Moreover, Truth in Lending was amended in 1970, 1974, twice in 1976, and in 1978; Regulation Z was amended many time between July 1, 1969, and March, 1980. By early 1980 the Act filled 20 printed pages in 52 numbered sections, many with lengthy subdivisions. The regulation measured 53 printed pages in 153 highly technical sections (many with subsections) plus the APR supplement.

However, probably most indicative of difficulties surrounding TIL is the number of times that Regulation Z has been interpreted, both administratively and by the courts. By early 1980 more than 1500 interpretations had been published by the Federal Reserve Board and staff, with varying degrees of legal authority. In addition, by June 30, 1979, more than 13,000 TIL lawsuits has been filed in Federal courts, representing 2 per cent of the Federal civil caseload (but up to 50 per cent of the cases in some districts).[2] This almost continuous stream of amendments, interpretations, and court decisions, along with interacting changes in state laws affecting such things as rate ceilings and security interests, produced a situation where total compliance was very difficult, at best. As long as 9 years after the effective date of the Act (July 1, 1969), the Federal bank regulatory agencies reported that more than 80 per cent of banks were not wholly in compliance, although most violations were judged "nonsubstantive" or "technical."[3] By the later 1970's legal situation became somewhat ironic in that much of the litation over Truth in Lending concerned aspects of disclosures apart from credit cost disclosures, the critical elements of Truth in Lending according to Congress. Notable among disputed areas in the late 1970's were identity of the creditor, security interest issues, disclosure of loan proceeds, acceleration clause issues, and issues of rescission.[4]

As a result of the difficult legal conditions surrounding Truth in Lending a movement to "simplify" the law gained support in the second half of the 1970's. "Simplification" is, of course, a concept that is relatively easy to support in principle, although strong differences may develop when the concept is defined more closely. Possibilities include: A more clearly worded statute, a less resticitive statute, fewer required disclosures, easier to read forms, less information-packed forms, reduced liability for creditors, additional defenses (for creditors or consumers), greater preemption of state laws, a shorter regulation, a clearer regulation, fewer interpretations, more but clearer interpretations, etc. Nevertheless, by mid 1977 the idea of "simplifying" Truth in Lending had gained a measure of bipartisan support in the United States Senate, even if not complete agreement on details.[5] Four bills were introduced in the 95th Congress in 1977, and after entensive hearings and markup sessions, a bill was reported out by the Senate Banking Committee and passed by the Senate on May 10, 1978. However, the House took no action in the 95th Congress and the bill was reintroduced in the 96th Congress in 1979. After another hearing the bill passed the Senate again in May, 1979, and eventually (with some amendments) the Truth in Lending Simplification and Reform Act was incorporated into the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96–221), which was signed by the President on March 31. Shortly afterward, on May 5, 1980, the Federal Reserve Board issued for public comment a complete redraft of Regulation Z to implement the new Act.

II. Framework for Evaluation

Regulatory anlaysis of the draft of revised Regulation Z ultimately involves answering questions in two difficult areas. The first area involves comparing the new regulatory structure to the old: In particular, does the new structure improve upon and/or simplify the old, and what, if any, are the structural benefits of the new regulatory approach? This question is examined in Section III. The second area concerns the new regulatory structure as an information protection: Specifically, is the new approach likely to affect consumers' information needs in the credit area or have other impacts on the goals of Truth in Lending? This question forms the subject matter of Section IV.

III. Regulatory Structure

1. *Changes Required by the Simplification and Reform Act.* The Truth-in-Lending Simplification and Reform Act made extensive changes in the Truth in Lending Act. According to the Senate Committee on Banking, Housing, and Urban Affairs, which drafted the Reform Act, the Committee's efforts were focused on four general areas: "providing the consumer with simpler, more understandable information; making compliance easier for creditors; limiting creditor civil liability or statutory penalities to only significant violations; and strengthening administrative restitution enforcement of the act."[6] A fifth area concerned technical changes to eliminate legal problems that had arisen from inconsistent decisions among Federal district courts. Substantive changes were made in each of the five areas.

Table I lists major kinds of changes made in each of these areas by the Simplification and Reform Act and reflected in the draft of revised Regulation Z. As can be seen, the Simplification Act made such fundamental changes in each area that the 1980 amendments might be characterized better as producing a new Truth-in-Lending Act than merely as amending the old act. For example, among the important changes the number of disclosures has been reduced

[2] Source: Administrative Office of the United States Courts.

[3] Board of Governors of the Federal Reserve System, *Annual Report to Congress on Truth in Lending for the year 1978* (January 3, 1979), pp. 10–11.

[4] For a concise review of the issues and cases in these areas see David S. Willenzik, "Truth in Lending Litigation, Specific Problem Areas," *Journal of Retail Banking*, June 1979.

[5] See United States Senate, Committee on Banking, Housing and Urban Affairs, *Simplify and Reform the Truth in Lending Act, Hearings on S. 1312, S. 1501, and S. 1653*, July 11–13, 1977 (Washington: Government Printing Office, 1977).

[6] United States Senate, Committee on Banking, Housing, and Urban Affairs, *Truth in Lending Simplification and Reform Act, Report to Accompany S. 108* (Washington: Government Printing Office, 1979), p.3.

and the format changed, model forms have been required and other changes have been made to aid compliance, civil penalties have been limited to key disclosures, and enforcement provisions have been altered. Because changes in these and other areas of the act are so substantial, major changes are also required in Regulation Z.

Table I—Areas of Change in Draft Regulation Z Arising From the Truth-in-Lending Simplification and Reform Act

1. Changes To Provide Consumers With Simpler, More Understandable Information. A. Reduction in the absolute number of disclosures, especially by reducing itemizations on closed-end credit.

B. Providing that supplemental information may not be intermingled with Truth-in-Lending disclosures.

C. Providing for short descriptive phrases to accompany numerical disclosures.

D. Providing that residential first mortgage disclosures be given at some time as Real Estate Settlement Procedures Act (RESPA) disclosures.

2. Changes To Make Compliance Easier for Creditors. A. Reduction in the absolute number of disclosures.

B. Requiring that the Federal Reserve promulgate model forms which would guarantee compliance if filled in properly.

C. Providing that all amendments or interpretations requiring forms changes become effective on October 1 of each year, with at least six months notice.

D. Providing for true tolerances of ⅛ percent for annual percentage rate disclosures and for wider tolerances on complex transactions under regulations of the Board.

3. Changes Affecting Civil Liability Provisions. A. Limiting creditors' civil liability for statutory penalties to only those disclosures regarded as being of central importance.

B. Extending the period during which a creditor can "cure" a violation and avoid civil penalties from 15 days to 60 days after discovery.

C. Providing that "discovery" of errors might be due to examination agency reports without cutting off the time period to cure.

D. Extending "bona fide error" defense to good faith calculation, computer, and printing errors as well as to clerical errors.

4. Changes To Strengthen Administrative Restitution Enforcement. A. Requiring administrative agencies to order refunds when finance charges or APR's are understated and when errors are part of a clear pattern or practice, are the result of gross negligence, or are willful.

B. Providing for some administrative discretion in ordering restitution, except for willful violations.

5. Changes To Clarify Legal Issues. A. Clarification concerning creditor responsible for disclosures on transactions involving more than one institution.

B. Clarification concerning adequate disclosure of security interests.

C. Clarification concerning disclosure of acceleration clauses.

D. Clarification concerning disclosure of right of rescission on certain transactions.

Beyond the specifics of the kinds of changes listed in Table I, the extent of the alterations in the act and regulation indicates some fundamental shifts in regulatory approach. One shift involves a movement away from the concept of full disclosure of everything as a Truth-in-Lending matter. Rather, the new act and draft regulation concentrate on requiring fewer disclosures, especially those believed to be most important to most consumers. The idea behind this change is that beyond these critical disclosures, regulatory burden increases faster than the usefulness of the disclosures to consumers. A second shift involves significant attempts at relieving the most burdensome compliance problems for creditors, especially by providing model forms that will guarantee compliance if used properly. A third shift moves enforcement efforts away relatively from private court suits for civil penalties and focuses enforcement effort on administrative actions by government agencies. This change should help slow the flow of court decisions that has required creditors constantly to be aware of potential changes in disclosure standards and which, on occasion, has produced differing disclosure standards among judicial districts.

2. *Other Changes Proposed.* Besides changes in Regulation Z mandated by the Simplification and Reform Act, the staff draft of revised Regulation Z reflects a large number of other proposed changes, which are listed in Table II. These changes are designed to provide additional simplifications in disclosure procedures so as to provide clearer standards, eliminate complexities, and provide a greater degree of flexibility in a regulation that had become quite inflexible. However, because each of the changes involves a tradeoff between full precise disclosures (which may be complex and difficult to make and understand) and simpler disclosures (that may be less complete or precise even if more understandable), some of the changes may be controversial. Nevertheless, the changes proposed appear consistent with the Congressional mandate for regulatory simplification.

Table II—Areas of Change in Draft Regulation Z Arising From Staff Attempts to Simplify the Regulatory Structure

1. Changes Designed to Provide Clearer Standards Concerning Applicability of Provisions of the Regulation. A. Definition of creditor subject to regulation is make more precise by providing a standard stated in terms of number of annual credits (25, or 5 real estate credits) rather than a standard in terms of "ordinary course of business."

B. Coverage of credit where there is no finance charge is limited to written agreements, thereby excluding informal installment agreements often offered by physicians and other professionals and tradesmen.

C. Definition of "consummation" before which disclosures must be made is made more precise by defining it as the point in time when a contractual obligation is established rather than when a vaguer "economic incentive" to go forward is established.

D. Determination that disclosures be based on legally enforceable obligation rather than on any informal agreement that may be at variance with the enforceable agreement.

E. Determination of which consumer in a joint credit is "primarily" liable and, therefore, must receive the disclosures is made unnecssary by permitting that disclosures be made to any obligor.

F. Exclusion of sellers' points from the finance charge on real estate transactions thereby obviating need to determine whether sale price of property was raised to include sellers' points.

2. Changes Designed to Make Good Faith Disclosures Easier Through Greater Availability of Small Tolerances. A. Provision for tolerance on disclosure of finance charges equal to tolerance for disclosure of annual percentage rates (⅛ of 1 per cent).

B. Provisions for wider tolerance of ¼ of 1 per cent on irregular transactions involving multiple advances or irregular payments.

C. Provision that slight changes in a transaction from good faith estimated disclosures do not necessitate full redisclosure.

3. Changes Designed to Highlight Disclosures Relevant to Credit Decisionmaking. A. Narrowing of definition of security interest that must be disclosed to exclude items such as proceeds of insurance that typically are

unrelated to credit decisions but which have contributed to litigation and ambiguity.

B. Limiting the frequency of need for complete redisclosure when terms are changed.

C. Limiting necessity of diclosure on assumption of an obligation to the case of residential mortgages.

4. Changes Designed to Eliminate Complexities. A. Exclusion from disclosure requirements of such transactions as utility "budget plans" and "layaway" plans that have some elements of a credit transaction but which, strictly speaking, are not credit.

B. Elimination of three-day waiting period on credit secured by residence if consumer certifies in writing (preprinted forms prohibited) that a bonafide personal financial emergency exists.

C. Elimination of need to consider compensating balances in annual percentage rate calculation.

5. Changes Designed to Allow Creditor Flexibility in Preparing Disclosures to Fit the Nature of the Transaction in Question. A. Allowing the creditor in a variable rate transaction to prepare the required example in a way that fits the specific transaction.

B. Allowing the creditor in a transaction involving multiple credit advances to prepare disclosures that fit the specific transaction.

C. Allowing creditors flexibility either to include or exclude in disclosures any cash rebates offered by the creditor or a manufacturer.

D. Allowing creditors more flexibility in showing repayment schedules in credit advertising.

3. *Evaluating the New Regulatory Structure*

Ultimately, the regulatory structure associated with Truth in Lending, like the regulatory and administrative apparatus associated with other consumer-oriented legislation, should be evaluated in terms of its contributions to (or detractions from) (1) market efficiency and (2) consumer protection. However, in the case of TIL these criteria are especially closely related. Truth in Lending is largely an information protection, and the main purpose of information protections is to improve the functioning of markets. Unlike behavioral or market protections (like Equal Credit Opportunity) that involve direct governmental interventions to affect market behavior of participants (especially businesses), the impact of information protections is more indirect. Instead of directly altering behavior, information protections assist consumers by improving the quality of efficiency of markets.

Markets are, of course, mechanisms for exchanging goods, services, or resources for value; and the concept of efficiency refers, in a sense, to the smoothness of the exchange mechanism. The concept has two components. The first, operational efficiency, concerns the mechanics of the transfer process itself. In particular, operational efficiency refers to the ability of a market to facilitate the transfer of goods or resources without loss of real resources to the transfer mechanism. Viewed in this manner, Truth in Lending and Regulation Z certainly introduce a measure of operational inefficiency into consumer credit markets by raising creditors' costs that must be paid by consumers. However, this is only half of the question.

The second component of market efficiency is allocational efficiency. Allocational efficiency refers to the extent to which markets allocate resources to their best uses. It has both a supply side and a demand side. From the supply side the question for TIL is whether the regulatory structure interferes with market allocation of resources to areas of highest return for a given risk. In contrast, from the demand or consumer side (the focus of this analysis) the question is whether the TIL regulatory structure helps consumers *obtain* resources at least cost for a given level of credit risk. Stated in this manner the relationship between market efficiency and consumer protection is more apparent: The concept of efficiency means best value for expenditure; this is precisely the intent of an information protection.

Unfortunately, because of the number of differnt kinds of costs involved, the amount of operational inefficiency introduced by the TIL regulatory structure is very difficult to measure. As a result, little statistical information is available and no broad-based cost analyses have been prepared. Nevertheless, despite these gaps in the record, it is still possible to indicate some cost-causing aspects of the regulatory apparatus and to make some comparisons of the old regulatory environment with the new. Comment is specifically requested on (1) current costs of compliance with Truth in Lending and Regulation Z; (2) expectations concerning likely impact of the new regulation on costs; and (3) expected start-up costs associated with change over to the new regulation.

A number of kinds of costs are incurred by creditors (and ultimately by consumers) as a result of Truth in Lending. In addition, each type of costs recurs (to a greater or lesser extent depending on the situation) whenever changes are made in the act or regulation. Before passage of the Simplification Act, frequent changes and interpretations of the regulation caused major compliance problems for creditors. Since one purpose of the new act is to reduce frequency of changes in the future, it should reduce costs in the long run. Nevertheless, to achieve these long-run advantages, substantial start-up costs will be incurred as the entire regulatory structure is changed. Delaying the effective date for one year and allowing transition to the new methods at any time during the year should reduce start-up costs relative to those of a more rapid implementation schedule.

A first group of costs associated with Truth in Lending is legal expenses. Legal expenses arise from a number of sources and problems. One source is the cost of designing disclosure forms that suit the credit programs of individual creditors but which also comply with Regulation Z. On some kinds of transactions (for example, large secured credit sales) required disclosures were quite complex prior to the Simplification Act, so legal preparation had to be quite detailed. Reduced disclosure requirements and issuance of model forms should help reduce costs in this area in the future. Likewise, the new regulatory structure should reduce the legal expenses of constant re-evaluation of disclosures, to the extent the act is successful in reducing frequency of changes and interpretations.

Another source of legal costs is litigation expenses. Truth in Lending has produced a substantial number of court cases, each of which requires legal attention. Unreported are the number of cases where some accommodation or settlement is reached without the formality of filing and litigating a suit. Expenses can be sizeable in either case, especially if plaintiffs's legal expenses are awarded as well. The simplified Truth-in-Lending Act and Regulation Z should reduce legal expenses of these kinds. Because compliance with the act has been made easier, legal expenses for both analysis and litigation should eventually be reduced, possibly after a spurt associated with implementing the new requirements.

A second TIL cost is the cost of forms and printing. After design, complying forms typically are printed by a commercial printer. As a result, any change in requirements necessitates not only new legal analysis, but new printing expenditures as well. Furthermore, often overlooked, a change

in forms requires that all obsolete forms be retrieved or otherwise destroyed. For a large creditor with multiple branches and possibly hundreds or thousands of employees, this requirement can involve substantial effort. Again, the new regulatory structure should reduce costs in this area. Besides minimizing the need and likelihood of rapid changes in disclosure requirements, the new rules specify that forms changes will be required no more than once per year. In 1977 the Commission on Federal Paperwork estimated this provision alone would reduce costs by $600 million annually.[7]

A third cost is the cost of employee training. If legal requirements change frequently and employees must be trained and retrained to use new forms correctly, substantial costs may result. Partially in response to this problem, but also for other reasons of management control, some creditors have instituted automated computer-processed TIL disclosure forms in recent years. Rather than relying on employees to fill in changing disclosure forms correctly, some creditors have programmed their computers to supply disclosures through terminals in branches or stores. However, computers must be purchased and programmed, so computer-related expenses constitute a fourth group of TIL costs. Actually, this category of costs should probably be expanded to encompass all kinds of calculating-disclosing aids including charts, tables, and calculators as well as computers. Since, to some extent, there is a tradeoff between sophistication of employees and extensiveness of calculation aids, training expenses and calculating-computing expenses might be added together in evaluating TIL. Nevertheless, regardless of how they are apportioned, costs associated with training and calculating should be reduced by the new regulatory structure, after an initial start-up phase.

Other TIL-related costs include the actual costs of disclosing required information and the costs of record retention. Actual costs of disclosing rates and other information are probably not very great on closed-end credit, given that terms must be negotiated or specified and contractual documents are prepared and signed anyway. Costs of disclosing on standard types of contracts consist of calculating the necessary information, placing it on the disclosure forms and handing the forms to consumers. Once the necessary legal judgments are made, forms prepared, employees trained and computers programmed (or charts and tables purchased) disclosures are not especially difficult or time consuming, as long as no changes are made in the procedures. On open-end credit finance charges must be disclosed on periodic statements (usually monthly); but, typically, the calculations would be made anyway since the disclosure statement also constitutes the periodic billing statement. The new act and regulation do not make substantive changes in the methods of actually making disclosures and so substantial cost savings are not expected from this source. Likewise, the new regulatory structure retains the earlier requirements on record retention (for compliance purposes), although retaining files can be costly. In 1977 the Commission on Federal Paperwork estimated that storage, filing, and clerical expense of maintaining files could amount to 16 cents per file. However, since creditors would be expected to keep files for a time anyway, not all of this expenditure can be attributed to TIL or other regulations. Nevertheless, Regulation Z requires that copies of disclosure statements be retained for 24 months which is beyond the closing date of many accounts. This requirement is not changed by the new regulation.

In sum, the new TIL regulatory structure should lead to lower compliance costs, thereby improving operational efficiency of credit markets. To the extent these gains can be achieved without sacrificing consumer protections, the new regulatory environment should produce a net gain for society as a whole through a more efficient market. However, before this conclusion is reached it is necessary, first, to examine TIL as an information protection. This topic forms the subject matter of Part IV.

IV. Truth in Lending as an Information Protection

1. *Potential Evaluative Criteria*

In evaluating the new Truth in Lending regulatory structure as an information protection, possibly the foremost concern is the need for an appropriate criterion or standard. The goal stated by Congress in Section 102 of the Act, avoidance of the "uninformed use of credit," is undoubtedly the Act's central purpose and a goal consistent with market efficiency, but measurement is subject to severe definitional and methodological difficulties. As a result, proxies are needed. Examination of the behavioral science literature as well as Congressional hearings and statements and the literature on Truth in Lending itself reveals that a large number of consumer-protection goals have been suggested as standards for TIL. Thirty-nine possible goals for Truth in Lending in nine separate categories are listed in Table III. There are probably also other goals that might be added to the list. However, the length of this table reveals the same difficulties in evaluating TIL as a consumer protection and the reason why simple tests are probably inadequate. Nevertheless, a few general principles might be stated.

Table III.—Goals of Truth in Lending

I. General Philosophical or Educational Goals

1. Satisfy Consumers' Right to Know
2. Enhance Consumer Education
3. Enhance Consumers' General Understanding of the Credit Process
4. Promote Long-Term Rise in Consumer Sophistication
5. Promote the Informed Use of Credit
6. Promote Wiser Credit Use

II. Goals Associated with Improving Consumer Decisionmaking

7. Reduce Credits Search Costs
8. Simplify Information Processing
9. Improving Consumers' Ability to Make Comparisons[1]
10. Enable Consumers to Match Products and Needs
11. Enable Consumers to Decide Between Using Credit and Using Liquid Assets[2]
12. Enable Consumers to Decide Between Using Credit and Delaying Consumption[2]
13. Show Consumers Where Search Can Be Beneficial

III. Cognitive Goals: Awareness and Understanding

14. Improve Awareness of Credit Costs
15. Improve Awareness of Non-Cost Credit Terms
16. Improve Awareness of Differences Among Classes of Institutions
17. Improve Consumers Understanding of the Relationships Among Credit Cost Terms

IV. Behavioral Goals

18. Encorage Credit Shopping

V. Attitudinal Goals

19. Improve Consumer Satisfaction
20. Improve Consumer Confidence

VI. Credit Market Goals

21. Enhance Competition in Consumer Credit Markets

[7] Commission on Federal Paperwork, *Consumer Credit Protection* (Washington: Government Printing Office, 1977).

[1] Referred to as the "Shopping Function" by the National Commission on Consumer Finance.

[2] Reffered to as the "Descriptive Function" by the National Commission on Consumer Finance.

22. Drive Out High-Cost Producers
23. Encourage Industry to Reform
24. Improve Credit Market Products
25. Discourage Risk Shifting by Institutions
26. Discourage *In Terrorem* Boilerplate Clauses in Contracts
27. Provide Vehicle for Legal Reforms
28. Protect Legitimate Business from Unethical Competition

VII. Institutional Control Goals

29. Promote Control of Institutions Through Compliance Requirements
30. Improve Consumers' Bargaining Position Relative to Institutions
31. Provide Defenses for Consumers
32. Provide Leverage for Hard-Pressed Debtors

VIII. Macroeconomic Goals

33. Enhance Economic Stablization

IX. "Behavioral" or "Market Protection" Goals

34. Require Procedures for Credit Card Billing Error Resolution
35. Provide Protections for Consumer Leasing
36. Provide "Cooling Off" Period for Credit Secured By Residence
37. Provide "Cooling Off" Period for Credit Negotiated in Consumer's Home
38. Provide for Limited Liability on Lost or Stolen Credit Cards
39. Eliminate Unsolicited Credit Cards

First, TIL as a consumer protection cannot be evaluated fully be examining only a single behavioral measure like credit shopping. Behavioral goals are only one of nine categories in Table III, and encouraging shopping is only one of 39 goals listed. Consequently, evaluating TIL on shopping alone, or for that matter on any single criterion, is likely to produce an incomplete analysis of the impact of this information protection. As a corollary, if it is not appropriate to evaluate TIL on only one criterion, then it seems inappropriate to recommend wholesale changes in the protection based on a single criterion. At a minimum any proposed changes should be evaluated in terms of the likely effects on a variety of goals. Again, the shopping criterion provides a useful example; it simply may not be reasonable to make wholesale changes in the regulatory structure to encourage shopping unless either the changes simultaneously encourage other goals as well or the changes can be made at small cost. If costs are large or impacts on other goals are small, then there exists the possibility of achieving small gains in allocational efficiency at the expense of large losses of operational efficiency. This could produce a net loss for society as a whole.

Second, some goals do not suggest any measurable evaluative criteria and must be evaluated indirectly. Probably the general philosophical and educational goals in Category I of the table offer the best examples. The six goals listed there are almost universally recognized as important aspects of TIL, but they appear too general for direct analysis and invite only indirect conclusions. However, it might be noted that if two disclosure programs each appear to satisfy these general goals but one also appears to satisfy other goals as well, or to satisfy the general goals at lower cost, then this method is preferable, other things equal.

Third, while some goals do offer evaluative criteria, the criteria may differ among individuals making it difficult to draw general conclusions. Many of the goals in Category II of the table illustrate this phenomenon. For example, goal number 10, improved ability to match products and needs, might be examined by studying choices made in the marketplace. The problem is that consumers' needs differ and, consequently, so will the choices made even under conditions of perfect information. Likewise, consumers faced with deciding between using credit and paying cash (goal number 11) will not all reach the same conclusion. In a world of perfect information some people will choose cash and others credit, depending on their individual circumstances. As a result, a simple criterion related to likelihood of taking one behavioral path or the other cannot be expected to produce useful analytical results.

Fourth, some goals may be more costly than others, especially if special attempts are made to achieve them without regard to costs. Encouragement of credit shopping (number 18) has already been mentioned as a possible example, but there are others as well. One is number 17, improving consumers' understanding of the relationships among credit cost terms. Much of the complexity, litigation, and costliness of the original TIL Act and Regulation Z arose, in a sense, out of attempts to satisfy this goal with extensive, detailed TIL disclosure statements. Possibly a better approach might have been to consider whether the details were necessary to achieve the other 38 goals or whether a simpler, less costly approach might have been sufficient.

2. *Evidence on the Effects of Truth in Lending.*

Unfortunately, there is relatively little direct evidence available about the impact of TIL on most of the goals listed in Table III. Furthermore, since evidence must typically be gathered by surveys at discrete points in time, the evidence is always subject to potential methodological problems, particularly that alternative explanations of the results are available.[8] Nevertheless, it is still possible to suggest some general conclusions concerning TIL as an information protection.

While little can be said definitively about the impact of TIL on the general philosophical and educational goals listed in Group I of Table III, as a concept it seems likely that TIL disclosures have fostered the general goals of satisfying the consumer's right to know and enhancing general educational aims. Similarly, it seems that consumers' general understanding of the credit process has probably been enhanced by TIL, and the law has probably contributed to increasing consumers' general sophistication over the long term. TIL has probably also supplied the tools for informed use of credit and wiser use of credit by consumers. Although these latter goals might seem quite similar at first glance, they are actually quite different since the second involves a value judgment concerning what is wise. To use an analogy from public health, it seems likely that required disclosures of warnings by the surgeon general about smoking have contributed to informed use of tobacco, although possibly not to wiser use among those still smoking. In the tobacco case the value judgment is fairly obvious but in the credit case it may be less so. Nevertheless, it seems likely that TIL has contributed to both more informed and wiser credit use, if only because it has provided necessary tools in the form of standardized disclosures and terminology.

In terms of this first group of TIL goals, the new regulatory structure provided by the Simplification Act and revised Regulation Z should, on balance, prove beneficial. The new structure should be as effective as the old in enhancing these general TIL goals, but it seems likely it will be able to do so at lower operational cost. As a result, the net effect appears positive, since the beneficial aspects of general consumer protection have not been sacrificed, but they will be achieved at lower cost to suppliers, after an initial costly phase-in.

The second group of goals involve individual consumers' decision processes. Studying the imnpact on

[8] For discussion of methodological issues see Lynn W. Phillips and Bobby J. Calder, "Evaluating Consumer Protection Programs: Part I. Weak But Commonly Used Research Designs," *Journal of Consumer Affairs*, Winter 1979, and Lynn W. Phillips and Bobby J. Calder, "Evaluating Consumer Protection Laws II: Promising Methods," *Journal of Consumer Affairs*, Summer 1980.

these goals is especially difficult since decision making criteria vary among consumers. However, as with the first group of goals, it seems likely that the new regulatory environment is an improvement on balance over the old because consumer protections in this area have not been sacrificed, even though costs may be lowered in the future. Probably of primary importance is TIL's requirement that rates be calculated in identical fashion regardless of credit source or type, a requirement that is retained in the new structure. This should be important, for example, in satisfying goal number 10, enabling consumers to match products and needs. Likewise, decisions about using cash or delaying consumption rather than using credit should be facilitated with standardized credit cost calculations available. Although survey evidence indicates that relatively few credit users are influenced by disclosures in their decision to take on debt,[9] some unanswered questions may be as important. These include the extent to which cash buyers are dissuaded from using debt by its cost and the extent to which consumers' attention to and sensitivity to finance rates has changed over time. Regardless of answers to these questions, it seems that TIL has provided consumers with the necessary tools, for whatever purpose they want to use them.

Most research on the effects of TIL has been concentrated on the third group of goals in table I (the Cognitive Goals) and especially on awareness of credit costs (goal number 14). Research attention has probably been focused in this area for two reasons. The first is that these goals, especially awareness of credit costs, offers a convenient operational evaluative criterion for testing. As a result, it is possible to draw conclusion without some of the kinds of complications associated with evaluating other goals. The second reason is the reasonable contention that cognition logically precedes use of information for decision making, and so evidence of awareness is an important preliminary evaluation. The argument is that since cognition precedes use, there must be awareness before use of information can be expected. Although evidence of awareness does not, by itself, demonstrate that information will be used, lack of awareness probably indicates that information cannot be used. Consequently, evidence of lack of impact of TIL on awareness could be taken as an indication the law had little impact in other areas either.

Surveys of consumers have indicated increasing levels of awareness of percentage rates of charge on credit transactions since implementation of Truth in Lending in 1969. Using an operational definition of awareness established by staff of the National Commission on Consumer Finance, surveys have revealed a sharp increase in awareness in the first 15 months of Truth in Lending and continuing gains afterward.[10] By 1977 levels of rate awareness reached 54 per cent for closed-end credit and 65 per cent and 71 per cent for retail revolving credit and bank credit-card credit, up from 14 per cent, 35 per cent, and 27 percent, respectively, in 1969. Although many factors undoubtedly affect credit knowledge, including gradually higher educational levels over time, it appears reasonable to conclude that TIL has focused attention on percentage rates and contributed to the sharp increases in awareness.

In contrast, despite changes in awareness of percentage rates since 1969, available consumer surveys indicate that credit shopping by consumers is not especially common. For example, a nationwide survey in 1977 found that only about one quarter of those with outstanding closed-end credit accounts had tried to obtain information about other creditors or credit terms before obtaining the credit.[11] Furthermore, a majority of those with outstanding closed-end credit indicated that familiarity with the creditor or prior good experience was the primary reason for obtaining credit from the particular creditor they chose. However, lack of shopping does not necessarily indicate unreasonable or irrational behavior. On the contrary, failure to shop may indicate an awareness of costs on the part of the consumer and may reflect the view that further shipping is unwarranted. Consumers may be wrong in their judgments, of course, but it does not seem that, by itself, failure to shop indicates a failure of TIL. Probably more important for TIL evaluation are the questions whether the regulatory structure increases cost awareness and whether it permits effective shopping, if desired. The first of these questions has already been answered affirmatively, and the second answer seems positive as well. By establishing a consistent unit price and standards of terminology, TIL permits consumers to shop for credit to whatever extent they feel is appropriate.

The fifth group of TIL goals concerns improving consumers' confidence in and satisfaction with the credit process. It seems likely that consumers, knowing that creditors must disclose certain costs and terms accurately under the watchful eye of regulatory authorities, might increase their confidence in the integrity of an otherwise complex transaction. This confidence could produce consumer benefits beyond any immediate specific uses consumers make of the disclosed information. However, since obtaining these benefits does not require any specific uses of the information disclosed, this group of goals argues for a simple disclosure scheme. Rather than a highly technical regulation with strict requirements, this group of goals could be addressed with simple methods. Thus, on balance, the new regulatory structure should provide net benefits in this area. Since benefits in the form of improvements in confidence and satisfaction with the credit process should not be reduced under the new regulatory structure, but costs should be reduced in the long run, net benefits should result.

Limited longitudinal survey evidence indicates that consumers' attitudes toward credit have improved since passage of the original Truth in Lending Act. Furthermore, attitudes have improved more rapidly during the years 1967–77 than 1959–67.[12] Clearly, however, changes in attitudes over time cannot be attributed solely to any piece of legislation. Income growth and employment stability over time for many members of the public may partly explain improved attitudes toward credit use. Inflation, which tends to reward early purchases of goods and to penalize accumulations of savings in the form of liquid assets, may also affect attitudes toward credit. Nevertheless, there remains the possibility that consumer protection regulations have contributed to overall increases in consumers' satisfaction with the credit process. Since any gains in this area might be achieved just as well by simple rules, though, this group of goals offers arguments for regulatory simplification.

The sixth group of goals is the credit market goals. Taken together, these goals refer to improvements in credit markets that might result from a generally more competitive environment. These include, all other things equal, such things as lower market prices, discouragement of unfavorable contract devices that might

[9] See George S. Day and William K. Brandt, *A Study of Consumer Credit Decisions: Implications for Present and Prospective Legislation* (Washington, Technical Studies of the National Commission on Consumer Finance, Vol. I, Government Printing Office, 1973).

[10] See Thomas A. Durkin and Gregory E. Elliehausen, *The 1977 Survey of Consumer Credit* (Washington: Board of Governors of the Federal Reserve System, 1978).

[11] *Ibid.*, chapter 5.

[12] *Ibid.*, chapter 10.

need to be disclosed, and protection of legitimate businesses from unethical competitors that might employ deceptive pricing in the absence of TIL. These, of course, were important original goals of Truth in Lending and were extensively discussed in Congressional hearings before passage of the Act.

As with the other groups of goals, evaluating the credit market goals is difficult because of competing explanations for any market changes and lack of specific data. Other things equal, a requirement that businesses provide pricing information calculated in a uniform manner should make markets more competitive. However, the magnitude of any effect depends on answers to a number of questions. One question concerns the importance consumers attach to the information disclosed. In the area of credit terms, available evidence suggests that consumers regard cost terms as most important.[13] As a result, requiring disclosure of cost-related terms would be consistent with improving market competitiveness. Obviously, this does not imply that disclosures need be complex or difficult to prepare. A second question concerns current competitive conditions in consumer credit markets. If markets are already fairly competitive, then the gains from implementing or changing Truth in Lending to improve competitiveness are likely to be small. Evidence on consumer credit competition before Truth in Lending is scarce, although markets were assumed to be less than perfectly competitive.[14] In contrast, limited more recent evidence suggests that consumer credit markets are fairly competitive.[15] Although the precise impact of Truth in Lending in promoting competition cannot be determined, this finding may indicate that further changes in TIL are unlikely to produce substantial additional benefits from a more competitive market. Any benefits already provided by TIL, though, are unlikely to be lost under the new regulatory structure.

The seventh group of goals in Table I, the Institutional Control Goals, is probably the group most directly affected by the new regulatory structure. As outlined previously, the Senate Banking Committee's stated purposes in drafting the Truth in Lending Simplification and Reform Act included making compliance easier for creditors and strengthening administrative restitution enforcement authority. The latter purpose encourages goal number 29, but the former may discourage the others, especially numbers 31 and 32. It appears that the goals of providing defenses for consumers and leverage for hard-pressed debtors were not part of the original plans of Congress in 1969. Instead, they arose from the complexity of the regulatory structure that made it difficult for creditors always to be in complete technical compliance. Creditors instituting collection actions were resisted occasionally by debtors alleging Truth in Lending violations. Such actions could result in settlements or judgments for the debtor that might reduce or eliminate the debt. Under the new regulatory structure such situations should develop less often. Apparently believing that private enforcement of Truth in Lending had contributed to its growing complexity, Congress de-emphasized private enforcement in the Simplification Act and increased the importance of administrative enforcement actions. This change should reduce the importance of TIL as a defense or a device to obtain leverage over creditors and re-emphasize the original goals of Truth in Lending as an information protection.

The eighth category of goals, the Macroeconomic Goals, was discussed extensively in Congressional hearings before passage of the original act, but has received little attention since. The argument made in the Congressional hearings was that disclosure of finance charges and annual percentage rates would discourage consumers from using credit during an economic boom and encourage credit use in a depression, other things equal. Taken together these effects would encourage economic stabilization by helping dampen business cycles.

The argument that availability of credit cost information over the course of the business cycle might improve economic stabilization is consistent with economic theory. The question is the magnitude of the effect which depends on the degree of fluctuation in consumer credit rates, consumers' knowledge of and sensitivity to credit cost fluctuations, and the importance of other factors such as income changes or changes in expectations. If fluctuations in rates are small, if sensitivity to costs is low, or if the impact of other factors is quantitatively larger, then disclosure of rates would not have much impact on stabilization. Answers to these difficult questions are not essential for reviewing the new Truth in Lending regulatory structure because TIL has many goals of which macroeconomic stabilization is one and clearly not the most important. Nevertheless, it is possible that regulatory rigidity in the past has limited creditors' willingness to change credit terms along with economic conditions. The new regulation should help minimize this problem by making compliance easier.

The final group of goals, the "Behavioral" or "Market Protection" Goals, do not generally concern Truth in Lending as an information protection; consequently, little will be said about them here. Furthermore, the new regulatory structure makes few changes in the market protection functions of TIL, and so potential impacts are not as great as they are in other areas.

V. Conclusion

In sum, it appears that the new regulatory structure resulting from passage of the Truth in Lending Simplification and Reform Act should result in net public benefits. Review of an extensive list of goals of TIL reveals that none of the original goals of the act will be affected adversely. However, consumer protections provided by the act ultimately should be available at less operational cost under the new structure, following start-up adjustment. An improvement in operational efficiency with no loss of allocational efficiency should lead to an improvement in the quality of the market, the goal of any information protection.

By order of the Board of Governors of the Federal Reserve System, November 28, 1980.

Barbara R. Lowrey,

Assistant Secretary of the Board.

[FR Doc. 80-37741 Filed 12-4-80; 8:45 am]

BILLING CODE 6210-01-M

[13] *Ibid., chapter 4.*

[14] See National Commission on Consumer Finance, *Consumer Credit in the United States: The Report of the National Commission on Consumer Finance* (Washington, Government Printing Office, 1972).

[15] See Gregory E. Boczar, The Evidence on Competition Between Commercial Banks and Finance Companies, *Journal of Bank Research*, Summer 1975 and Gregory E. Boczar, "Competition Between Banks and Finance Companies: A Cross Section Study of Personal Loan Debtors, "*Journal of Finance*, March 1978.

federal register

Friday
December 5, 1980

Part IV

Department of Health and Human Services

Food and Drug Administration

Bendectin and Other Combination Drugs Containing Doxylamine and Vitamin B_6; Draft Guideline Patient Package Insert

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80N-0370]

Draft Guideline Patient Package Insert; Bendectin and Other Combination Drugs Containing Doxylamine and Vitamin B_6

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing for comment a draft guideline patient package insert for the combination drug containing doxylamine and vitamin B_6. The drug is used to treat the nausea and vomiting of pregnancy ("morning sickness"). The drug is marketed under several brand names, the best known being Bendectin (marketed by Merrell-National Laboratories, Cincinnati, OH). Use of the final guideline patient package insert by manufacturers, distributors, and dispensers of the drug will constitute compliance with the content requirements of the agency's patient package insert regulations. FDA will add Bendectin and drop warfarin (an anti-coagulant drug) from the group of drugs to which the agency is initially applying its patient package insert regulations.

DATE: Comments by January 19, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Stephen C. Groft, Bureau of Drugs (HFD-107), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4893.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is asking for comments on a draft guideline patient package insert for the combination drug containing doxylamine succinate (an antihistamine) and pyridoxine hydrochloride (vitamin B_6) that is labeled for the treatment of nausea and vomiting during pregnancy (often called "morning sickness"). The drug is most commonly referred to by the brand name Bendectin, marketed by Merrell-National Laboratories, Cincinnati, OH, which has the greatest share of the market for the drug. For purposes of brevity, the agency will refer to the drug as "Bendectin" in this notice, but this notice applies to all combination drugs that contain doxylamine and vitamin B_6 and are intended to treat the nausea and vomiting of pregnancy.

In the **Federal Register** of September 12, 1980 (45 FR 60754) the agency adopted final regulations establishing requirements and procedures for the preparation and distribution of patient package inserts for prescription drugs for human use. The agency also published in that issue of the **Federal Register** 10 draft guideline patient package inserts (45 FR 60785). In the final rule the agency stated that it will limit the initial implementation of the patient package insert program to 10 drugs or drug classes for about 3 years, and will evaluate the program again before applying the requirements to other drugs. In the notice of draft guidelines the agency stated that it would publish 3 final guideline patient package inserts in November 1980, 3 in December 1980, and 4 in January 1981. In the **Federal Register** of November 25, 1980 (45 FR 78514), FDA published final guideline patient package inserts for cimetidine, clofibrate, and propoxyphene.

As discussed more fully below, FDA believes that a patient package insert would contribute to the proper use of Bendectin in treating the nausea and vomiting of pregnancy. Because the agency has not yet implemented its patient package insert requirements for all of the drugs and drug classes identified in the September 12, 1980, notice and because the agency still believes it should limit the initial implementation of the program to 10 drugs or drug classes, the agency will substitute Bendectin for one of the original 10 drugs or drug classes. Of the drugs and drug classes to which FDA intended to apply patient package insert requirements during the initial 3-year phase, FDA has decided to drop warfarin. The agency believes that other drugs in the program will provide information during the 3-year evaluation period similar to that which the agency would have obtained from the study of a warfarin patient package insert. Patient package inserts for digoxin, and phenytoin, which are both long-term care drugs that require careful dosage control and good patient compliance for their safe and effective use, will provide the kind of information the agency would have obtained from a warfarin patient package insert. In addition many physicians, pharmacists, and other health care professionals are already engaged in efforts to educate patients who use warfarin about anticoagulant therapy. Because it is used under close medical supervision, the agency believes a patient package insert for warfarin would have the least incremental improvement on patient safety of the 10 drugs or drug classes originally selected for the agency's program. Thus, both on medical grounds and taking into account the need for a balanced selection of drugs for evaluation purposes, the agency concludes that warfarin is the appropriate drug to drop in order to add Bendectin.

FDA had intended to publish a final guideline patient package insert for warfarin, as well as final guideline patient package inserts for ampicillins and phenytoin, in December 1980. The agency still intends to publish final guideline patient package inserts for ampicillins and phenytoin in December and for benzodiazepines, digoxin, methoxsalen, and thiazides in January 1981, and now intends to publish a final guideline patient package insert for Bendectin in February 1981. Under the patient package insert regulations (21 CFR 203.30(a)) the agency's patient package insert requirements will be effective for each drug or drug class 180 days after the date of publication of a notice in the **Federal Register** that issues the final guideline for a drug.

Use of any drug during pregnancy may carry potential risks to the fetus, information that FDA believes should be brought to the direct attention of users. Although Bendectin is widely used to treat the nausea and vomiting of pregnancy, alternative nondrug treatments, including eating soda crackers or dry toast or drinking hot or cold liquids, are known to relieve mild nausea and vomiting. This information should also be made known to users of the drug.

About 2 to 3 percent of children are born with a major birth defect. If the mother has taken certain drugs or other substances, such as alcohol, during pregnancy this risk may be increased. The risk of a birth defect is greater if the substance is taken during the first 8 to 12 weeks of pregnancy, when the unborn child develops basic parts of the body.

In 11 of 13 studies of pregnant women who received Bendectin, there was no evidence of an association between the drug and an increased risk of birth defects. None of the studies, however, was large enough to rule out a small increase in risk. One study suggested the possibility of an increased risk of heart defects and another study suggested the possibility of an increased risk of cleft lip and cleft palate in children born to women who took the drug during pregnancy. An association of Bendectin and these defects are not confirmed by other studies. Nevertheless, FDA believes it prudent to revise Bendectin's professional labeling

to recommend the drug for the nausea and vomiting of pregnancy only when they are severe enough to interfere with eating or daily activities and cannot be adequately treated with the nondrug measures described above.

On September 15 and 16, 1980, FDA's Fertility and Maternal Health Drugs Advisory Committee reviewed the available scientific information about Bendectin's safety, including its possible association with birth defects. The committee concluded that existing data do not show an association between the drug and an increased risk of human birth defects. Nevertheless, the committee noted a "residual uncertainty" in the sensitivity of the available studies and recommended that certain current epidemiological studies of Bendectin be continued and that certain changes be made in the drug's labeling. Among the labeling changes was a committee recommendation that the agency require a patient package insert for the drug. The agency accepts that recommendation. A transcript of the advisory committee meeting has been placed on public display in the office of the Dockets Management Branch (HFA–305), at the address given above.

The agency believes a patient package insert for Bendectin will give patients the opportunity to be informed about the benefits and risks involved in the use of any drug during pregnancy. The patient package insert includes a statement about birth defects and cautions women generally about taking drugs during pregnancy. Because of the potential risk to the unborn child, the draft guideline states that nausea and vomiting that does not interfere with normal eating habits or daily activities usually does not require treatment with drugs and that nausea and vomiting of pregnancy can often be controlled by nondrug treatments such as eating soda crackers or dry toast or drinking hot or cold liquids on rising in the morning. The agency also proposes that the guideline patient package insert contain information about side effects of the drug and general cautions for patients because of potential side effects (for example, a caution that the product may make the patient drowsy and, thus, the patient should be careful while driving a car).

The draft guideline patient package insert for Bendectin complies with the content requirements for patient package inserts in § 203.20(b), except in the following respects:

The guideline patient package insert is drafted to permit manufacturers and distributors to refer to the drug by its brand name. For this combination drug, FDA believes patients will find it easier to understand a patient package insert that uses the drug's brand name instead of using repeatedly the scientific names of its two active ingredients.

The patient package insert does not contain statements about the use of the drug during labor or delivery and use in special populations such as pediatric or geriatric patients because Bendectin does not have a recognized use in any of those situations.

The patient package insert does not contain information about the excretion of the drug in breast milk because the agency believes pregnancy and breast feeding are unlikely to occur simultaneously in Bendectin users.

The patient package insert does not contain a specific section about risks, a section that is used in other guideline patient package inserts, because the risks from taking Bendectin primarily involve birth defects and are described under a heading entitled "Pregnancy and Birth Defects."

The patient package insert does not include a statement about the drug's use "for other conditions as determined by your doctor," because there is only one recognized indication and one well-defined patient population (pregnant women).

The use of a final FDA guideline patient package insert constitutes compliance with the regulations governing the content of the inserts except that the regulations require certain items of information to be filled in by each person responsible for preparing an insert. Use of the guideline is not required, however. To facilitate comments on the draft guideline, the agency is publishing it in a format that will permit commenters to make written comments directly on their **Federal Register** copy of the guideline. After FDA receives and considers comments on the draft guideline, the agency will establish a final guideline patient package insert. FDA will also formally apply the patient package insert regulations in Part 203 (21 CFR Part 203) to the drug in the manner specified in § 203.30(a) (21 CFR 203.39(a)) by publication of a notice in the **Federal Register.**

Interested persons may submit written comments by January 19, 1981 on the draft guideline to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. If comments are not written directly on the **Federal Register** copy, please identify them with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

The draft guideline patient package insert for combination drugs containing doxylamine and vitamin B_6 follows:

BILLING CODE 4110–03–M

Doxylamine and Vitamin B-6

(pronounced: dox-il'-a-meen and vye'-ta-min B-6)

(Brand Name)

Summary

(Brand Name) is used to treat the nausea and vomiting that may occur during the first few weeks of pregnancy. You should take this drug only if nausea and vomiting interfere with your eating or daily activities and if other treatments prescribed by your doctor do not relieve your symptoms. These other treatments include eating soda crackers or dry toast, or drinking hot or cold liquids as soon as you wake up in the morning.

There is no way to prove that any substance taken by pregnant women does not cause birth defects on rare occasions. For this reason, no drug, including (Brand Name), should be taken during pregnancy unless it is clearly necessary.

As a side effect (Brand Name) may make you drowsy, so use care while driving a car or using machines until you know how the drug affects you.

The rest of this leaflet gives you more information about (Brand Name). Please read it and keep it for future use.

Use of (Brand Name)

Nausea and vomiting of early pregnancy (morning sickness) is very common but usually disappears in a few weeks with no treatment. For some women, these symptoms are severe enough that they interfere with eating or daily activities. The simplest treatment for this condition is eating soda crackers or dry toast, or drinking hot or cold liquids, as soon as you wake up in the morning. If this does not work, (Brand Name) may be tried. (Brand Name) contains two drugs, an antihistamine (doxylamine) and vitamin B6.

How To Take (Brand Name)

Nausea and vomiting of pregnancy usually occur in the morning. Take two tablets at bedtime so that the drug will start working by morning. If this dosage does not relieve your nausea and vomiting, you may have to take an additional tablet in the morning or mid-afternoon. Your doctor may change your dosage schedule depending on how severe your symptoms are and when they occur. If the nausea and vomiting are severe and are not relieved by (Brand Name), contact your doctor.

If you miss a dose of (Brand Name), take it as soon as you remember. Take the day's remaining doses at the scheduled time. Do not take two doses at the same time unless your doctor specifically tells you to do so.

Pregnancy and Birth Defects

About 2 or 3 out of every 100 children born have a major birth defect. This risk may be increased if the mother takes certain drugs or other substances, such as alcohol, during pregnancy. The risk of a birth defect is increased if the substance is taken during the first 8 to 12 weeks of pregnancy, when the unborn child develops basic parts of the body. It is not possible to prove that any drug or other substance is totally free of risk, or absolutely safe, if taken during pregnancy.

In 11 of 13 studies of women who took this drug during pregnancy, there was no evidence that it increased the risk of birth defects. None of the studies, however, was large enough to rule out the possibility that there may be a small increase in risk. One of the 13 studies suggested the possibility of an increased risk of heart defects in children born to users of this drug. In another study there was an association of the use of this drug with the occurrence of mouth defects (cleft lip and cleft palate). Because other studies did not have such findings, it cannot be concluded that these defects are due to this drug.

Because it is not possible to prove that a drug taken by a pregnant woman does not, on rare occasions, cause birth defects, (Brand Name) should be taken only when clearly needed. Although this leaflet cautions about the use of (Brand Name), this drug has been the most carefully studied of all drugs which could be used to treat the nausea and vomiting of pregnancy. There is no evidence that any other drug is safer in treating the nausea and vomiting of pregnancy.

General Cautions

(Brand Name) may make you drowsy. Be careful while driving a car or using machines until you know how it affects you. Taking (Brand Name) with alcohol or other drugs—such as cough and cold remedies, antidepressants, pain killers, or tranquilizers—may increase the drowsiness.

BILLING CODE 4110-03-C

Tell your doctor if you have had a serious reaction to an antihistamine or (Brand Name) in the past. These reactions include extreme drowsiness, increased agitation, excitement, or sleeplessness.

Side Effects

In addition to drowsiness, (Brand Name) can sometimes cause vertigo (a spinning sensation), headache, confusion, irritability, nervousness and sleeplessness, and stomach pain. If any of these or other side effects bother you, call your doctor.

Other Information

For (Brand Name) to help you, take it as directed on the label. This drug has been prescribed specifically for you and your present condition. Do not give it to others even if they have similar symptoms. Also do not use it yourself for any condition other than the one for which it was prescribed.

If you think you have taken an overdose or if you think someone else has taken an overdose, contact your poison control center, doctor, pharmacist, or nearest hospital emergency room immediately. KEEP THIS DRUG AND ALL DRUGS OUT OF THE REACH OF CHILDREN.

If you want more information about (Brand Name), ask your doctor or pharmacist. They have a more technical leaflet (called the professional labeling) you may read.

Dated: November 28, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80-37747 Filed 12-4-80; 8:45 am]

BILLING CODE 4110-03-M

federal register

Friday
December 5, 1980

Part V

Department of Labor

Mine Safety and Health Administration

Procedures for Operator Sampling of Respirable Dust; Coal Miners Who Have Evidence of Development of Pneumoconiosis

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 71

Respirable Dust; Operator Sampling Procedures

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor's mandatory health standards for surface coal mines and surface work areas of underground coal mines are amended to revise the procedures for operator sampling of respirable dust. The final rule revisions include changes in the number of samples required, the sampling schedule and the certification requirements for persons performing sampling and equipment maintenance and calibration. This rule will result in an overall improvement of the respirable dust sampling program.

EFFECTIVE DATE: February 1, 1981.

FOR FURTHER INFORMATION CONTACT: William H. Sutherland, Chief, Division of Health, Mine Safety and Health Administration, Room 810, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203; telephone (703) 235–1358.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

In April 1978, the Mine Safety and Health Administration (MSHA) circulated to interested persons for comment a draft proposal of revisions to 30 CFR Part 71, regarding sampling of respirable dust at surface coal mines and surface work areas of underground coal mines. Several comments on the draft were received and fully considered in developing the proposed rule.

Also considered in developing the proposed rule were relevant comments received in related rulemaking to revise 30 CFR Part 70, respirable dust sampling in underground coal mines. Several of the procedures in proposed Part 70 were virtually identical to the draft Part 71 procedures.

The proposed rule for Part 71 was published in the **Federal Register** on April 8, 1980 (45 FR 24009), and included notice of public hearings on the proposal. These hearings, set for June 3 and 5, 1980, in four locations, were scheduled to be conducted together with public hearings on related proposals to amend 30 CFR Part 70 (to include miner participation in sampling procedures) and 30 CFR Part 90 (coal miners who have evidence of pneumoconiosis).

MSHA received several requests to hold separate public hearings on the proposed amendments to Parts 70, 71 and 90 that would provide for miner participation in the sampling process. Separate public hearings on the proposals for miner participation were held on August 12 and 14, 1980 (45 FR 39310). Hearings on all other issues were held, as originally scheduled, on June 3 and 5, 1980. The final rule addresses only these other issues; a separate final rule concerning miner participation will be published at a later date.

II. Summary and Analysis of the Final Rule

A. Respirable Dust Standard

Respirable dust is defined as dust collected with a sampling device approved by the Secretary of Labor (or Secretary of the Interior) together with the Secretary of Health and Human Services (previously Health, Education, and Welfare) in accordance with Part 74 of Title 30, Code of Federal Regulations. This definition was published as a final rule on April 8, 1980 (45 FR 24008).

This final rule sets forth the standard for permissible concentrations of respirable dust at surface coal mines and surface work areas of underground coal mines. The standard, which is the same standard set forth in section 202 (b) (2) of the Act for underground coal mines, requires that the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of a mine is exposed be continuously maintained at or below 2.0 milligrams of respirable dust per cubic meter of air (2.0 mg/m^3). However, the respirable dust standard is lower than 2.0 mg/m^3 of air where the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz. Under these conditions the operator is required to continuously maintain respirable dust at or below an average concentration less than 2.0 mg/m^3 of air, computed by dividing the percentage of quartz into the number 10. As the quartz content of respirable dust in the mine atmosphere increases over 5 percent, the respirable dust standard is correspondingly reduced. Samples for determining the quartz content of respirable dust will be analyzed by MSHA. If the quartz content exceeds 5 percent, MSHA will apply the formula set forth in the rule and notify the operator of the respirable dust standard applicable at the mine.

These respirable dust standards are based on measurement with an MRE instrument (gravimetric dust sampler with four channel horizontal elutriator). Therefore, when an approved sampling device is used for sampling, it is necessary that the concentration of respirable dust measured with the approved device be converted to an equivalent concentration of respirable dust as if measured with an MRE instrument. This conversion will be done by MSHA and accomplished by multiplying the concentration of respirable dust measured with the approved sampling device by the constant factor prescribed by the Secretary of Labor for that approved sampling device.

B. Respirable Dust Sampling

1. *Designated work positions.* To determine compliance with the respirable dust standard, each operator is required to collect respirable dust samples from "designated work positions" and submit them to MSHA for analysis. Under the rule, designated work positions will be selected by the District Manager. In determining which work positions at a mine should be sampled, the District Manager will regularly review the results of respirable dust samples taken by the operator and taken by MSHA. (Initially, MSHA will consider samples taken since January 1, 1979.) If the average concentration of respirable dust measured by one or more of the samples reviewed exceeds 1.0 mg/m^3 of air, then the District Manager will designate the work position involved for further sampling under the final rule. Where the respirable dust standard is below 1.0 mg/m^3 of air due to the presence of quartz, work positions will be designated for sampling if an average concentration of respirable dust exceeding the applicable standard has been measured by one or more samples.

The District Manager also is required to withdraw the designation of work positions for sampling under the final rule upon finding that the operator is able to maintain continuing compliance with the applicable respirable dust standard. In making this judgment, the District Manager is required to consider the results of sampling conducted under this rule and by MSHA over a period of at least one-year.

2. *Bimonthly sampling requirements.* After work positions have been designated for sampling, the operator is required to collect and submit one respirable dust sample for each designated work position during each of the bimonthly periods set forth in the rule. If a respirable dust sample taken from a designated work position exceeds the respirable dust standard applicable at the mine, MSHA will so notify the operator. The operator is then

required under the final rule to submit five additional samples collected for that designated work position within 15 calendar days. The operator is required to begin collecting these samples on the first day on which there is a normal work shift following the day of receipt of notification.

To satisfy the sampling requirements of the final rule, operators are required to take "valid respirable dust samples." These are defined in the rule as respirable dust samples collected and submitted as required by this part, and not voided by MSHA. Samples not collected and submitted in accordance with all the procedures and requirements of the rule could be voided by MSHA. Voided or invalid samples will not satisfy the bimonthly sampling requirements. Therefore, it is advantageous for operators to collect and submit the bimonthly sample for each designated work position during the first month of each bimonthly period. This would allow the operator ample opportunity to collect and submit additional samples if necessary. Failure to take the required valid respirable dust samples within a bimonthly period constitutes a violation under the rule. Respirable dust samples received by MSHA in excess of the number required by this part will be considered invalid samples.

3. *General sampling procedures.* Under the final rule, all respirable dust samples taken by operators for purposes of the rule are required to be collected with a sampling device approved by the Secretary of Labor (or the Secretary of the Interior under the Coal Act) and the Secretary of Health and Human Services (previously Health, Education, and Welfare) under Part 74 (Coal Mine Dust Personal Sampler Units) of Title 30, Code of Federal Regulations. These sampling devices must be operated while carried directly to and from the designated work position to be sampled and during the entire shift, or for eight hours, whichever time is less. The rule also requires that all samples be taken on a "normal work shift" which is defined in two parts. First, a "normal work shift" is a shift during which the regular duties of the designated work position are performed while routine day-to-day mining activities are occurring in the rest of the mine. The purpose of this provision is to require sampling to be conducted while the dust generation sources that affect a designated work position are active. In addition, a "normal work shift" is defined as a shift during which there is no rain, or a limited amount of rain. Specifically, the rule provides that if rain occurs during a sampling shift, it is a "normal work shift" only if the rain does not suppress the respirable dust to the extent that sampling results will be measurably lower, in the judgment of the person certified to conduct sampling. Instruction in how to evaluate the effect of rainfall on dust conditions at the mine will be included in training offered by MSHA for persons certified under this rule. This restriction on rainfall requires that sampling be conducted when the dust from mining activities is not naturally controlled by rainfall. The purpose here is to determine through sampling results whether the operator is able to control respirable dust concentrations within permissible limits when it is not raining. It should be noted that this rain restriction for a "normal work shift" applies only where the designated work position being sampled, and the dust that affects it, is exposed to the rain. For example, the rain restriction would not apply for a designated work position inside of an enclosed surface installation.

The final rule also takes into account that some mines are affected by climates that are normally very wet for at least part of each year by providing for a waiver of the rain restriction for "normal work shift." Upon written request by the operator, the District Manager may waive the rain restriction for up to two months, if the District Manager determines that (1) the operator will not have reasonable opportunity to complete the sampling required by this rule without the waiver because of the frequency of rain; and (2) the operator did not already have reasonable opportunity to complete the sampling required by this rule prior to requesting the waiver.

If a "normal work shift" is not achieved because routine mining activities were not conducted for the full shift, or because of rainfall during the shift, the samples still must be transmitted to MSHA. However, the person certified to conduct sampling is required to note on the data cards for the samples that they were not taken on a normal work shift. Samples not taken on a normal work shift may be voided by MSHA. This provision of the final rule assures that respirable dust samples are collected only on "normal work shifts" as defined by the rule. However, the final rule also provides that any sample, regardless of whether a normal work shift was achieved, with a respirable dust concentration greater than 2.5 mg/m^3 of air will be used to determine the average concentration for the designated work position being sampled. This provision recognizes that if a concentration greater than 2.5 mg/m^3 of air is present, it is apparent that some significant dust generation source is active and this dust is affecting the designated work position.

C. Transmittal and Analysis of Samples

After the end of a sampling shift, the operator is required to transmit all samples collected to MSHA within 24 hours. Under the final rule, all respirable dust samples collected by an operator are deemed to be taken to fulfill the sampling requirements of Parts 70, 71 or 90 of Title 30, Code of Federal Regulations, unless the operator has declared in writing to the District Manager prior to the intended sampling shift that the sampling filter cassettes were to be used for other purposes. Therefore, absent such a written declaration by the operator to the District Manager, all respirable dust samples collected by an operator will be required under the rule to be submitted to MSHA within 24 hours after the end of the sampling shift.

Each sample transmitted by operators to MSHA is required to be accompanied by the appropriate completed dust data card. Data cards are provided by the filter cassette manufacturer and each card has an identification number corresponding with the filter cassette for which it is provided. All dust data cards submitted to MSHA are required to be completed and signed by a person certified under this rule to collect samples and must include that person's certification number.

Upon receipt, MSHA will analyze samples submitted by operators as quickly as practicable. Following this analysis, MSHA will provide the operator with a respirable dust sample data report. The data report will include identification of the designated work positions from which the samples were taken; the concentration of respirable dust for each valid respirable dust sample; and the reason for voiding any samples. Upon receipt, the operator is required to post this data report for at least 31 days on the mine bulletin board.

D. Enforcement of Respirable Dust Standards

MSHA will make determinations as to compliance with the applicable respirable dust standard in § 71.100 (Respirable dust standard) or § 71.101 (Respirable dust standard when quartz is present) of this rule based on the designated work position samples submitted by each operator. If a designated work position sample taken in accordance with the rule shows a respirable dust concentration in excess

of the applicable standard, the operator will be notified by MSHA to take an additional five valid respirable dust samples from that work position within 15 calendar days, beginning with the first day on which there is a normal work shift following the day of receipt of notification. If the five samples show an average concentration of respirable dust in excess of the applicable standard, the operator will be cited for a violation. Upon issuance of any citation for violation of the applicable respirable dust standard in § 71.100 or § 71.101 and until abatement of the violation is achieved, the usual bimonthly sampling requirements of the rule do not apply to the affected work position. During the time for abatement fixed in the citation, the operator is required to take corrective action to lower the concentration of respirable dust and then sample each production shift until five valid respirable dust samples are taken. Abatement of the violation will be determined on the basis of the first five valid respirable dust samples received during the abatement period.

E. Respirable Dust Control Plan

A basic objective of the final rule is to identify work positions where there are concentrations of respirable dust that exceed the standard applicable at the mine and to require the operator to achieve and continuously maintain compliance with the standard thereafter. MSHA believes that the objective of continuing compliance can best be accomplished by requiring the operator to incorporate the respirable dust control measures used to abate a violation into the mining system employed. The rule, therefore, provides that within 15 days after the termination date of any citation for a violation of the applicable respirable dust standard in § 71.100 or § 71.101, the operator is required to submit to the District Manager for approval a written respirable dust control plan for the work position identified in the citation. The dust control plan must include a detailed description of the specific respirable dust control measures used by the operator to abate the violation and how these controls will continue to be used to maintain compliance with the respirable dust standard. As to how the dust controls will continue to be used, the plan must state at least the time, place and manner that the controls will be applied.

The District Manager will approve respirable dust control plans on a mine-by-mine basis. When approving respirable dust control plans, the rule requires the District Manager to consider whether the dust control measures and their application as described in the plan are likely to maintain compliance with the respirable dust standard applicable at the mine. In this respect, the rule provides that MSHA may take additional respirable dust samples to determine whether the control measures in a dust control plan are effective in maintaining compliance with the respirable dust standard. Also when approving dust control plans, the District Manager is to consider whether the plan describes the dust controls to be used and their application in such a way that the operator's compliance with the plan can be objectively ascertained by MSHA during subsequent inspections.

Upon approval of an operator's respirable dust control plan, the operator is required to comply with all provisions of the approved plan. The operator is also required to post a copy of each approved plan on the mine bulletin board. After gaining experience under an approved plan, operators may submit revisions to the plan for approval by the District Manager.

F. Certified Persons

The maintenance, calibration and use of sampling equipment as prescribed by this rule are major improvements in the respirable dust sampling program. Accordingly, these tasks are required to be done only by "certified persons." The rule provides a certification for maintaining and calibrating sampling equipment and a certification for conducting sampling. Persons may hold one or both of these certifications. Temporary certification is provided for persons who receive basic instruction in the methods and procedures of this program from an MSHA inspector, pending their prompt completion of the certification requirements discussed below.

The certification requirements of this rule are identical to the certification requirements in the final rule for Part 70 (Respirable dust sampling in underground coal mines) and the final rule for Part 90 (Coal miners who have evidence of the development of pneumoconiosis). Therefore, persons certified under Part 70, this rule, or Part 90 are "certified persons" for purposes of any of these three rules.

1. *Maintaining and calibrating respirable dust sampling equipment.* To be certified in maintenance and calibration of sampling equipment, persons are required to pass the MSHA examination on maintenance and calibration procedures. The essential maintenance requirement of this rule is that approved sampling devices be maintained in a condition such that they will perform as approved under Part 74 of Title 30, Code of Federal Regulations. Approved sampling devices are required to be calibrated in accordance with MSHA Informational Report No. 1121, "Standard Calibration and Maintenance Procedures for Wet Test Meters and Coal Mine Respirable Dust Samplers (Supersedes IR 1073)."

2. *Collecting respirable dust samples.* To be certified under the final rule to collect respirable dust samples, persons are required to pass an MSHA examination on sampling of respirable coal mine dust. Careful examination and testing of respirable dust sampling devices are required immediately prior to the start of each shift during which samples are to be collected. This examination and testing may be done by a person holding either of the certifications provided by the rule and includes testing the battery voltage and examining all external components of the sampling devices to be used. Any necessary external maintenance to assure the sampling devices are clean and in proper working condition may be performed at this time by any certified person. The final rule also requires that each sampling device be examined at least twice during each sampling shift. These examinations are required to be made only by a person certified to collect samples. The first examination is required to be made during the second hour after the sampling devices are put into operation on a sampling shift. This examination is primarily intended to assure the sampling devices are operating correctly and at the proper flowrate. Any necessary adjustment in the flowrate is required to be made at this time by a person certified to collect samples. The second examination is required to be made during the last hour the sampling devices are operated during the shift. This examination may be made at any time during the last hour, including when the sampling devices are stopped at the end of the sampling shift. If a sampling device has not maintained the proper flowrate, the sample still must be transmitted to MSHA under the rule, but with a notation made by the person certified to collect samples indicating an improper flowrate.

G. Miner Participation

The proposal for miners to participate in the sampling procedures of this rule has not been finalized at this time and therefore is not part of this rule. In response to requests, MSHA held separate public hearings on the portion of the proposed rule providing that the representative of miners be afforded an opportunity to observe the sampling

procedures of this rule while they are being carried out by the operator. MSHA also received extensive written comments on the proposal. These comments and the public testimony raised significant issues that were not directly related to the proposed amendments to respirable dust sampling procedures. Therefore, MSHA has finalized the sampling procedure amendments and will separately develop the rule for miners to participate in these procedures. When provisions for miner participation are finalized, they will be published as an amendment to Part 71.

III. Discussion of Major Issues

Section 71.2

Among the written comments received and in the testimony at the public hearings there were repeated objections that the proposal did not restrict respirable dust sampling under wet conditions. These commenters stated that under the existing rule and the proposal, respirable dust sampling can be regularly conducted when dust is being naturally controlled by rain and consequently the sampling results will not reflect the higher respirable dust concentrations that may be present under dry conditions.

Under the final rule not all work positions are sampled. Instead, respirable dust sampling is focused on selected work positions where there is potential for dust concentrations that exceed the standard. MSHA's data indicates that many of the work positions that will be designated for sampling are work positions that are protected from the weather. As a result, the dust sources that affect these work positions are not suppressed by rain. For example, work positions in enclosed surface facilities may be designated for sampling under the final rule. These work positions and the sources of dust affecting them are within the structure of the facility and consequently the dust will not be controlled by rain. Nevertheless, a significant number of the work positions that may be designated for sampling under the final rule are affected by respirable dust that can be suppressed by rain. For example, a coal driller or bulldozer operator is exposed to dust that is minimized by rain. In these instances, MSHA agrees that sampling under rainy conditions is inappropriate. A primary purpose of the respirable dust sampling program is to protect miners from exposure to respirable dust concentrations that exceed the applicable standard. To accomplish this, MSHA must be able to ascertain the higher concentrations of respirable dust that normally occur at each mine.

To restrict sampling under extremely wet conditions, the proposed definition of a "normal work shift" is revised to include a limitation on the amount of allowable rainfall during a sampling shift. Under the final rule, it is a "normal work shift" for sampling purposes if there is no rain. However, if rain does occur, it may still be a "normal work shift" so long as the rainfall during the shift does not suppress respirable dust to the extent that the sampling results will be measurably lower than if it had not rained.

The rule does not state how much rainfall is too much for sampling purposes. The duration and volume of rainfall, and how these variables combine, significantly contributes to whether sampling results are appreciably affected. A simple time limitation would not account for the volume of rainfall and therefore would not be appropriate in all circumstances. A measure of the volume of rainfall would not take into account when during the shift it occurred and this would be impractical to ascertain. Therefore, the final rule requires that the effect of rain on respirable dust sampling results be judged by a person at the mine who is certified to conduct sampling. Instruction in how to evaluate the effect of rainfall on dust conditions at the mine will be included in the training offered by MSHA for persons certified under this rule. If the rain that occurs during a sampling shift suppresses the respirable dust in a designated work position to the extent that sampling results may be appreciably lower than if no rain had occurred, then the certified person is required to note on the data card for that sample that a "normal work shift" did not occur. Samples not taken on a "normal work shift" will be voided by MSHA, unless the concentration of respirable dust measured exceeds 2.5 mg/m^3 of air.

Failure by a certified person to note that a "normal work shift" did not occur due to rainfall, or because any of the other requirements for a "normal work shift" were not satisfied, would constitute good cause for MSHA to revoke that person's certification. As will be mentioned several times in this preamble, MSHA expects persons certified under this rule to significantly contribute to improving the respirable dust sampling program. Under the rule, certified persons are relied upon to complete numerous tasks that are vital to collecting accurate and useful respirable dust samples. Therefore, MSHA will proceed to revoke the certification of any person who fails to conscientiously carry out these responsibilities.

MSHA recognizes that the rain restriction for a "normal work shift" may make it unreasonably difficult to complete the sampling requirements of the rule at mines affected by climates that are very wet for at least part of the year. Accordingly, the rule also provides for a waiver of this restriction. Upon written request by the operator, the "normal work shift" rain restriction may be waived by the District Manager for up to two months if the normal frequency of rain is such that the operator would not have a reasonable opportunity to complete the required sampling, and the operator did not forego prior reasonable opportunity to complete the required sampling. The purpose of this waiver is to enable the operator to anticipate wet weather seasons that may affect bimonthly sampling requirements and timely request a waiver of the "normal work shift" rain restriction for that bimonthly period.

Section 71.101

The National Institute for Occupational Safety and Health (NIOSH) suggested in its comments on the proposed rule a revision of the existing standard for respirable dust when quartz is present. NIOSH recommended a limit of 50 micrograms of free crystalline silica per cubic meter of air. This new standard, which was not contained in the proposal, would require the average concentration or respirable dust to be reduced below 2.0 mg/m^3 of air when the free silica present exceeded .050 milligrams per cubic meter of air. Converted to an MRE equivalent, this would be .070 milligrams per cubic meter of air.

NIOSH's recommended standard was previously proposed as a revision to 30 CFR Part 70 (Respirable dust sampling in underground coal mines) (42 FR 59294). It was not adopted, however, for the reasons discussed in the preamble to the final rule for Part 70, published in the **Federal Register** on April 8, 1980 (45 FR 23990). Briefly, although MSHA has placed high priority on developing a silica standard for mining, it was concluded that the existing standard for quartz should not be revised until NIOSH develops a criteria document specifically addressing the silica exposure hazard in the mining industry. NIOSH is now developing these criteria, which will provide valuable information regarding permissible exposure limits and equally important matters such as

sampling procedures and medical examinations of exposed miners.

Section 71.201

A few commenters objected to the proposed requirement that the operator, upon request, submit to the District Manager the date on which sampling for purposes of this rule will begin. Several of the commenters said that the operator could not always state precisely when sampling will begin and that only the date they expected to begin sampling could be provided to the District Manager. MSHA recognizes that the operator is only able to state when sampling is scheduled to be conducted, and this is all that was intended under the proposal. Accordingly, this provision of the proposal is retained in the final rule. It should also be understood that the primary purpose of this requirement is to enable MSHA to observe the sampling procedures of this rule as they are being implemented at the operator's mine. By doing this, it has been MSHA's experience that sampling errors and mishandling of equipment can be readily corrected, reducing the number of samples that are voided and saving the operator time and expense.

Sections 71.202 and 71.203

A few commenters suggested that persons who have been previously certified or qualified to take respirable dust samples or to maintain and calibrate sampling equipment should not have to be certified again under this final rule.

The certification requirements adopted in this final rule are identical to the recently revised certification requirements of Part 70 (Respirable dust sampling in underground mines) and the final rule for Part 90 (Coal miners who have evidence of the development of pneumoconiosis), which is contained in today's **Federal Register**. Therefore, MSHA agrees that persons certified under Part 70, this rule or Part 90 would be "certified persons" for purposes of any of these three rules. However, MSHA does not agree that persons previously certified or qualified by MSHA under other regulations to conduct sampling, maintenance or calibration should be considered "certified persons" for purposes of these rules. The requirement that sampling, maintenance and calibration be done only by persons certified in accordance with this final rule (or the revised requirements of Parts 70 or 90) is an integral part of improving the operator respirable dust sampling program. MSHA believes that certification through these new examination requirements will assure a basic level of competency in applying the substantially revised sampling requirements and procedures. In addition, MSHA believes that certification of persons under the final rule will improve sampling results through properly maintained and calibrated equipment. Temporary certification pending completion of the certification requirements is provided to alleviate any potential problem of accommodating all persons seeking certification under the final rule.

Section 71.204

A few commenters questioned the proposed requirement that sampling devices be tested and examined "immediately" before each sampling shift. These commenters suggested this could be done at a time prior to just before the start of the sampling shift, such as the day before sampling is conducted.

The proposed pre-shift examination requirements for sampling devices, other than the battery voltage check, involve simple visual confirmation that the external components of the equipment are in place, clean and not damaged. This type of examination immediately before the sampling shift or as sampling devices are issued is, MSHA believes, good practice in order to collect accurate samples. This procedure will also reduce the incidence of voided samples. Checking the battery voltage immediately before using sampling devices will also contribute to reducing the number of voided samples since improper flow rate is a common reason for samples being voided. MSHA is not convinced that examining sampling devices and checking the battery voltage the day before a sampling shift is an equally effective procedure. Therefore, the final rule provides that testing and examination of sampling devices shall be done immediately before each sampling shift.

Section 71.205

A few commenters objected to the proposed requirement that sampling devices be examined twice each shift by a person certified to conduct sampling. Under the proposal, sampling devices must be examined during the second hour after they are put into operation, and then during the last hour they are operated on the shift. The commenters generally recognized the importance of these on-shift examinations to assure that the sampling devices are operating at the proper flowrate. However, the commenters objected to the requirement that these examinations be made only by a person certified to conduct sampling. They asserted that a person did not need to be fully certified to conduct sampling in order to competently check the flowrate of sampling devices and make any necessary adjustments. Some commenters suggested that a limited certification just to examine and adjust the flowrate of sampling devices would be appropriate.

As discussed in the proposal and elsewhere in this preamble, MSHA believes that the certification of persons under this rule and the requirement that only certified persons conduct sampling (and maintenance and calibration) are major improvements in the respirable dust sampling program. By having persons knowledgeable in the proper handling and use of sampling equipment, MSHA anticipates improvement in the accuracy of sampling results and a reduction in the number of samples voided. Part of this improvement will derive from having persons certified to conduct sampling present during sampling shifts. In addition to checking the flowrate of sampling devices, these persons will be able to observe other conditions that may affect the accuracy of sampling results. For example, how sampling equipment is being handled by miners who are wearing the devices, or the location of sampling devices in instances when they are not worn by a miner, can be observed and errors corrected. Therefore, MSHA does not believe that a limited certification for persons to check and adjust the flowrate of sampling devices would provide the full benefit of on-shift examinations being made by persons fully certified to conduct sampling. In addition, MSHA is not persuaded that requiring on-shift examinations to be made by fully certified persons is more burdensome than requiring only a limited certification. Full certification to conduct sampling will not be difficult to accomplish under the final rule, and MSHA will make the certification process as convenient as possible. Accordingly, the final rule requires on-shift examinations of sampling devices to be made by persons certified to conduct sampling.

Section 71.207

This section is reserved in the final rule. Under the proposal, § 71.207 contained the criterion for designation of work positions for sampling. These provisions, with some revisions based on the comments received, are now part of § 71.208 (Bimonthly sampling; designated work positions). This reorganization does not substantively change the rule, but is intended to emphasize how the provisions of this

part and Parts 70 and 90 of Title 30 are parallel in many respects. By organizing these parallel provisions in a similar order in each of the parts, MSHA hopes to assist operators who must conduct sampling under any two or all three of these sampling programs.

Section 71.208

A few commenters questioned whether the proposal to sample designated work positions at bimonthly intervals would increase the health protection afforded miners. The proposed sampling requirements were developed by MSHA based on more than eight years of experience with sampling at coal mine surface locations. MSHA believes that the final sampling requirements, which combine the proposed provisions with several important changes based on the comments received, significantly improve the health protection afforded miners under the existing sampling requirements. In addition, MSHA and NIOSH will be engaging in an assessment of the effectiveness of the new sampling procedures to determine if further improvements can be made.

More specifically, the old provisions of Part 71 require an operator to sample on one of two schedules, depending on sampling results. These sampling schedules are initiated by a single sample taken for each miner at the mine. If the results of this initial single sample indicate a respirable dust concentration of 1.0 mg/m³ of air or less, then one sample is required to be taken for this miner every 12 months. If the results of the initial sample indicate a respirable dust concentration greater than 1.0 mg/m³ of air, but less than 2.0 mg/m³ of air, then one sample is required to be taken for this miner every 6 months.

The final rule greatly improves this old sampling program by requiring sampling only at work positions where there is potential for respirable dust concentrations that exceed the standard, rather than requiring samples for each miner at the mine. At work positions where at least one sample has indicated a concentration of respirable dust exceeding 1.0 mg/m³ of air, the final rule requires a single respirable dust sample to be taken on a regular bimonthly schedule. As a result, these work positions where there is evidence that dust may be a problem are sampled at least six times each year, or three times more frequently than under the old sampling program. MSHA believes that these sampling requirements greatly increase miner health protection. At the same time, the overall number of samples required to be collected is reduced, since samples are not required for all miners at the mine.

Several commenters criticized the proposed criterion by which work positions would be selected for bimonthly sampling. Under the proposal, the District Manager would designate a work position for sampling if one or more samples have measured a respirable dust concentration, exceeding 2.0 mg/m³ of air, or the standard applicable at the mine if greater than five percent quartz is present. These commenters objected that only a few samples are or will be available for a significant number of work positions and that this data is not sufficiently reliable to determine whether there is potential for dust concentrations exceeding the standard.

As discussed above, the final rule is designed to eliminate unnecessary sampling and to increase the frequency of sampling where there is potential for concentrations of respirable dust that exceed the standard. In doing this, however, MSHA is aware that great care must be taken in determining which work positions will be sampled, since this will also determine which work positions will *not* be sampled under the rule. Therefore, to fully protect the health of miners the criterion for selecting work positions for sampling must minimize the risk of not designating for sampling a work position where there is potential for concentrations of respirable dust that exceed the standard.

The risk of not designating for sampling a work position where there may be a respirable dust problem is affected by two factors. One factor, which was raised by the commenters, is the number of samples considered. When only one or two samples are available, the respirable dust hazard cannot be reliably evaluated. Consequently, there is insufficient basis for concluding that further sampling under this rule is unnecessary to assure compliance. Another significant factor is whether the sampling results are very near the respirable dust standard. Regardless of the number of samples available, sampling results at or near 2.0 mg/m³ of air do not support the conclusion that further sampling is unnecessary to assure compliance. Instead, sampling results at or near 2.0 mg/m³ of air constitute evidence that there is potential for respirable dust concentrations exceeding this standard.

In view of these considerations, the final rule provides that work positions will be designated for bimonthly sampling if one or more samples have measured a respirable dust concentration exceeding 1.0 mg/m³ of air. This criterion minimizes the risk of not designating a work position for sampling where there is potential for a respirable dust problem, even when very few samples are available. When all the samples reviewed for a work position, even if there are very few, indicate concentrations of respirable dust at or below 1.0 mg/m³ of air, MSHA belives that the work position need not be sampled under the rule to assure compliance. At mines where the respirable dust standard is below 1.0 mg/m³ of air due to the presence of quartz, work positions will be designated for sampling where a concentration of respirable dust exceeding the applicable standard has been measured by one or more samples. When sampling results from these mines indicate respirable dust concentrations at or near the applicable standard, MSHA will take additional samples to assure all appropriate work positions are designated for sampling.

A few commenters criticized the use of existing sampling results to initiate the selection of designated work positions under the rule. These commenters asserted that this data is inadequate to reveal all of the work positions at which miners may be exposed to respirable dust concentrations that exceed the standard. MSHA recognizes that previous sampling results are not determinative of all the conditions currently existing at each mine. However, MSHA believes that these sampling data do provide an appropriate basis upon which to initially designate work positions for sampling. It should be understood that existing sampling results are being used here as a guide in initiating the revised sampling program. MSHA will continue to take samples to determine where respirable dust presents a health hazard at surface locations and designate work positions for sampling accordingly.

Commenters both supported and opposed the proposal that District Managers may withdraw the designation of a work position for respirable dust sampling of bimonthly sampling results demonstrate continuing compliance with the applicable standard for at least six months. Several commenters approved the proposal of an administrative procedure through which the District Manager could determine whether to withdraw the designation of a work position for sampling. However, these commenters strongly cautioned against routinely withdrawing the designation of work positions for sampling on the basis of sampling during only six months since

this could be based on as few as three samples. It was recommended that more substantial evidence of continuing compliance with the respirable dust standard be required before the District Manager is authorized to withdraw the designation of a work position for sampling. Other commenters maintained that the District Manager should be required by the final rule to withdraw the designation of a work position for sampling whenever sampling results indicate compliance for six months.

As discussed above, the procedures of this rule are designed to require sampling of each work position where potential exists for concentrations of respirable dust that exceed the applicable standard—until it is clearly demonstrated that respirable dust concentrations in these work positions are and will continue to be maintained within permissible limits. With this purpose in mind, it is important that sampling under the rule be discontinued only on the basis of substantial data demonstrating continuing compliance with the respirable dust standard. MSHA agrees that as few as three respirable dust samples collected at bimonthly intervals over a six month period may not provide sufficient data to reliably determine whether there will be continuing compliance. Accordingly, additional assurance of continuing compliance is needed before the District Manager discontinues the requirement of sampling a work position. To provide this additional assurance, the District Manager is authorized to withdraw the designation of a work position for sampling only after finding that the operator is able to maintain continuing compliance with the applicable respirable dust standard. In making this decision the final rule provides that the District Manager must consider the results of samples taken during at least a one-year period. The samples that must be considered by the District Manager are all of those taken under this rule for the designated work position, and samples taken by MSHA. With this revision to the proposal, the District Manager is required to consider sampling data from at least one year, rather than six months, and these sampling results must support the finding that the operator is able to continue to maintain compliance with the applicable respirable dust standard. Where sampling data supports such a finding, MSHA believes that sampling under this rule is properly discontinued.

Under the final rule, when a bimonthly sample from a designated work position indicates a respirable dust concentration exceeding 2.0 mg/m^3 of air or the applicable standard, five additional samples are required to be taken to determine whether there is compliance with the respirable dust standard. A few commenters suggested that these additional samples should be required whenever a bimonthly sample from a designated work position indicates a respirable dust concentration exceeding 1.0 mg/m^3 of air. They argued that this is necessary to account for the risk that a single bimonthly sample might not detect a violation when the concentration of respirable dust is very near the respirable dust standard.

This suggestion is not adopted in the final rule because it would result in more sampling than MSHA believes is necessary to assure compliance with the applicable respirable dust standard. The number of samples required to be taken under the final rule would be substantially increased if five additional samples were required for each bimonthly sample that indicated a respirable dust concentration exceeding 1.0 mg/m^3 of air. This would result because work positions are designated for sampling under the final rule only if there is evidence that the dust concentration exceeds 1.0 mg/m^3 of air. Consequently, five additional samples would be routinely required each bimonthly period for nearly all designated work positions. This is more sampling than MSHA believes is reasonably necessary to assure compliance with the respirable dust standard. MSHA recognizes that such a substantial increase in the number of samples for designated work positions would virtually eliminate any risk of not immediately detecting instances when the concentration of respirable dust slightly exceeds the respirable dust standard. However, this risk is present only when the dust concentration is very near the standard. Moreover, this risk decreases with each bimonthly sample taken at the designated work position where such conditions exist. As bimonthly sampling results accumulate for the designated work position, the presence of dust concentrations which slightly exceed the respirable dust standard will be detected. Five additional samples will then be required and MSHA will make a compliance determination. In addition, MSHA samples may be taken to supplement the results of operator bimonthly samples in instances where additional data is necessary to assure compliance with the respirable dust standard.

Several commenters objected to the proposal that after a bimonthly sample indicated respirable dust concentrations exceeding the applicable standard, the operator would be notified by MSHA to take five valid samples "within 15 calendar days." These samples would be used to make a compliance determination. The commenters argued that allowing the operator to take samples for compliance determinations on any shift during a 15-day period provided an opportunity for samples to be taken under conditions that minimize dust concentrations. Common examples cited here were low mining activity and rain. To resolve this, commenters asserted that samples for compliance determinations should be required to be taken on consecutive shifts, as required under the existing sampling procedures.

MSHA agrees that respirable dust sampling should be done when regular mining activities are being conducted so that dust generation sources at the mine are active. MSHA also agrees that sampling should not be done when respirable dust is controlled by rain. Accordingly, these principles have been incorporated into the final rule. However, this is accomplished through the provision that MSHA may void samples not taken on a "normal work shift." As discussed above, the definition of "normal work shift" includes regular mining activity and limited or no rainfall. MSHA believes that these provisions better resolve the concern of the commenters than would a requirement of consecutive shift sampling.

Several commenters also questioned the effect of the proposal to base compliance determinations on five samples. Under the existing respirable dust sampling requirements, which this final rule amends, compliance determinations were based on ten samples.

The effect of reducing the number of samples from ten to five was evaluated by MSHA. A statistical analysis of respirable dust sampling data showed no significant change in the confidence level for compliance decisions. The confidence level for compliance decisions decreased approximately 3.5 percent when based on five samples rather than ten samples. MSHA also considered the effect of reducing the number of samples used for compliance determinations on the overall respirable dust monitoring program. Reducing the number of samples from ten to five will significantly reduce the time necessary for MSHA to report the results to operators. Accordingly, operators will be able to more promptly abate violations, which will appreciably reduce the length of time miners may be exposed to excessive dust

concentrations. MSHA believes this is a significant improvement in the health protection afforded miners under the existing respirable dust program. Therefore, the proposal to reduce the number of samples for compliance determinations from ten to five is adopted in the final rule.

A few commenters suggested that the final rule should include a provision setting forth how the potential for variability in sampling results is accounted for in MSHA's determination of compliance with the respirable dust standard. MSHA recognizes that under this rule, or any sampling program, there may be some variation between the actual concentrations of respirable dust present in the mine atmosphere and the dust concentrations determined by sampling results. MSHA, however, believes that the final rule minimizes the variability inherent in the sampling program. Compliance determinations will generally be based on the average concentration of respirable dust measured by five valid respirable dust samples taken by the operator during five normal work shifts. Therefore, the sampling results upon which compliance determinations are made will more accurately represent the dust in the mine atmosphere than would the results of only a single sample taken on a single shift. In addition, MSHA believes the revised sampling and maintenance and calibration procedures prescribed by the final rule will significantly improve the accuracy of sampling results.

A few commenters, however, argued that the remaining potential variability in sampling results should be resolved by setting an artificial respirable dust standard in the rule, as high as 2.4 mg/m³ of air. These commenters suggested that enforcement action should only be taken by MSHA when the average concentration of five valid respirable dust samples exceeds this higher standard. MSHA believes that such a method of accounting for variability in sampling results would significantly reduce the health protection of miners. Relying on an "enforcement action level" of 2.4 mg/m³ of air to determine compliance would expressly allow miners to be exposed to respirable dust concentrations that exceed the standard. In addition, this method of determining compliance would ignore the possibility that because of variability in sampling results, samples may show concentrations of respirable dust that are lower than were actually present in the mine atmosphere. While this risk is slight using the 2.0 mg/m³ of air standard to determine compliance, it would be significant if a higher "enforcement action level" was used. Therefore, the variability in sampling results remaining after averaging together multi-shift samples and using improved sampling, maintenance and calibration procedures under the rule cannot be reduced merely by implementing a higher respirable dust standard for purposes of compliance determinations. Accordingly, the final rule minimizes the potential for variability in sampling results and enforcement action will be taken by MSHA based on these sampling results.

Several commenters asserted that the respirable dust standard can only be enforced based on the results of a sampling device worn by an individual miner for an entire shift. The respirable dust standard provides that the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of a mine is exposed shall not exceed 2.0 mg/m³ of air. MSHA believes that this standard applies to the atmosphere to which miners are exposed anywhere in the active workings of a mine. Therefore, the standard would be properly enforced based on the results of a sampling device worn by a miner in the active workings since the sampling device would measure the respirable dust in the atmosphere to which that miner was exposed. However, the results of a sampling device not worn by a miner, but located in the active workings and in the atmosphere to which a miner is exposed, would also provide a proper basis for enforcement of the standard since it too would measure the respirable dust in the atmosphere to which that miner was exposed. The necessary element in both of these sampling procedures, either of which may be used under the final rule, is that they measure the atmosphere to which the miner is exposed. Therefore, MSHA does not believe that enforcement of the respirable dust standard is limited to the results of a sampling device worn by an individual miner. With these considerations in mind, it was proposed and the final rule provides that designated work positions will be sampled. The miner assigned to a work position designated for sampling may either wear the sampling device while in the work position, or place it within the atmosphere of the work position as prescribed by the rule. The purpose of this requirement is to determine compliance with the respirable dust standard in locations where miners are present for a significant portion of each shift. In addition, sampling work positions at the mine rather than individuals will assist operators in identifying locations at the mine where dust is a problem. As a result, dust generating sources can be identified and the dust can be controlled.

When the miner assigned to a designated work position does not wear the sampling device, the proposal provided that the sampler may be placed at a location in the immediate environment of the miner when he or she is in the work position. More specifically, under the proposal, samples for designated work positions involving equipment operation could be taken by placing the sampling device on the miner or within 36 inches of the miner's normal work position while operating the equipment. Respirable dust samples for designated work positions not involving equipment operation could be taken by placing the sampling device on the miner assigned to the work position or at a location that represents the maximum concentration of respirable dust to which the miner is exposed.

One commenter objected that the respirable dust concentration measured by a sampling device placed within 36 inches of an equipment operator's normal work position may not be precisely the same as the dust concentration that would be measured if the miner wore the sampling device. MSHA recognizes that there may be a slight difference in the results of a sampling device worn by the miner and a sampling device placed within 36 inches of the miner. However, MSHA believes that the respirable dust standard is properly enforced based on the results of either of these samples since they both measure the respirable dust present in the mine atmosphere to which the miner is exposed while the miner is in his or her work position. If the concentration of respirable dust at a miner's work position is maintained at or below the permissible level, MSHA believes the miner is afforded the protection intended by the standard. Therefore, the proposal that sampling devices may be placed within 36 inches of the equipment operator in a designated work position is retained in the final rule. However, the final rule also adopts the proposal to allow respirable dust sampling devices to be placed on the individual miner in the work position being sampled. Therefore, mine operators may place the sampling device on the miner if they prefer.

A few commenters objected to the proposed requirement that when the miner assigned to a designated work position not involving equipment operation does not wear the sampling device the sampling device must be

placed in a location that represents the maximum concentration of dust to which the miner is exposed. These commenters expressed concern that a sampling device placed in this manner could indicate a higher concentration of respirable dust than would be measured by a sampling device worn by the miner in the work position. The proposal by its very terms provided for the sampling device to be placed so that it will measure the mine atmosphere to which the miner is exposed while in the designated work position. Therefore, the respirable dust standard is properly enforced based on the results of a sampling device placed in this manner. Moreover, only by measuring the highest concentration of respirable dust in the atmosphere to which the miner is exposed can the miner be afforded the health protection intended by the standard.

Accordingly, the proposal that a sampling device be placed at a location that represents the maximum concentration of dust to which the miner is exposed, if the miner does not wear the sampling device, is adopted in the final rule. However, it should be understood that the purpose of this requirement is only to prohibit placing the sampling device in the work position where it would indicate a lower concentration of respirable dust than would be measured by a sampling device worn by the miner while in the work position. Also, the final rule allows the sampling device to be placed on the miner under these circumstances, if the mine operator prefers.

Section 71.209

Several of the comments received objected to the proposed requirement that samples be transmitted to MSHA within 24 hours after the end of each sampling shift. These commenters indicated that it would be more convenient in some instances to accumulate respirable dust samples from several shifts and transmit them together. Other commenters were concerned that special efforts might have to be made to transmit samples collected just prior to a weekend or holiday.

MSHA is not persuaded that these considerations outweigh the benefit to be derived from having respirable dust samples transmitted within 24 hours after they are collected. It is important that samples be transmitted to MSHA for analysis in the shortest reasonable time in a protective container made for the purpose so that the weight of the samples will not be affected. MSHA has received no information indicating that 24 hours is an unreasonable time within which to accomplish this. In addition, the efficiency of the respirable dust sampling program will be improved by having samples transmitted after each sampling shift for analysis and report back to the operator.

Section 71.210

A few commenters objected to the proposal to delete miners' social security numbers from MSHA's report of sampling results to the operator. These commenters stated that this would hinder the ability of operators to acquire evidence of the individual exposure of miners who seek black lung benefits. Although there has been no Federal black lung benefit case in which MSHA reports of sampling results have resulted in the denial of benefits, the record in this and related rulemakings is replete with statements from miners that the attempted use by operators of MSHA reports of sampling results in black lung benefit cases caused miners to be uncooperative with the sampling program.

In this rulemaking MSHA's primary objective is to amend the respirable dust sampling requirements and procedures so that the program will be most effective in protecting the health of miners. To accomplish this, it has been MSHA's experience that the full cooperation of the miners is essential. For this reason, the proposed rule included miner participation in the sampling procedures. This has been discussed above. MSHA also plans to educate miners as well as operators in the procedures and requirements of the final rule. MSHA also believes that the cooperation of miners in this program can be enhanced by deleting their social security numbers from MSHA reports of sampling results. This will not prohibit operators from establishing the concentration of respirable dust in the atmosphere to which individual miners were exposed. However, MSHA will not provide this information since it is not necessary to the primary purpose of this rule and there is evidence that it may undermine the effectiveness of the program.

Several of the comments received objected to the proposed requirement that results of MSHA's respirable dust sample analysis be posted by operators on the mine bulletin board for at least 31 days. This posting requirement is designed to provide miners ready access to current information as to respirable dust conditions in the mine. The data reported to the operator will not contain information identifying individual miners. MSHA has received no information indicating that posting this information would be contrary to the best interests of miners or burdensome for operators. Therefore, the proposed posting requirement is adopted in the final rule.

Section 71.220

A few of the comments received included objections to the proposed status change reporting requirement. These commenters anticipated that three days could, in some instances, be too short a time within which to be sure that a status change at the mine was permanent. They suggested that seven to ten days would be more appropriate.

The status change reporting requirement applies only to changes at the mine that affect the respirable dust sampling requirements. Therefore, not all status changes must be reported. However, if, for example, a work position designated for bimonthly sampling is dropped from the mining cycle, MSHA would need to know of this status change as soon as possible. Otherwise, samples from the designated work position would be expected and a citation would be issued if they were not received. While seven to ten days may in some instances be more convenient for reporting a status change, MSHA believes that notification within three days of a status change that affects the sampling requirements is necessary for MSHA to avoid unnecessary enforcement action. Therefore, the final rule provides that status changes must be reported to MSHA within three days.

Sections 71.300 and 71.301

Commenters both supported and opposed the proposal for respirable dust control plans. Under the proposal, after a citation for violation of the respirable dust standard the operator would be required to develop a written respirable dust control plan. The dust control plan would be required to specify the dust control measures used by the operator to achieve compliance with the standard and how these same dust control measures will continue to be used to maintain compliance. After MSHA approval, the operator would be required to comply with all provisions of the plan. Several commenters expressed concern that enforcement action could be taken against an operator for failure to maintain compliance with the approved dust control plan, even though there may be compliance with the respirable dust standard at the time of inspection. Other commenters approved of this result.

The purpose of the respirable dust control plan is to assure continuing compliance with the applicable respirable dust standard after abatement of a violation is achieved.

Once a violation of the standard is demonstrated by sampling results, MSHA believes that the dust control measures used to abate the violation should become an integral part of the mining system. In this way, the health of miners is protected at all times, not just when sampling is conducted to determine whether there is compliance with the standard. Therefore, the proposal that operators develop and maintain compliance with a written respirable dust control plan after violation of the respirable dust standard is retained in the final rule.

Several commenters further argued that the final rule should include a procedure for administrative appeal of a District Manager's decision to not approve an operator's respirable dust control plan. These commenters maintained that without a procedure for appeal of such a decision, the operator would be denied an opportunity to prove that the proposed respirable dust control plan was adequate.

The final rule expressly provides that MSHA may take samples to test the effectiveness of respirable dust control measures specified in the operator's respirable dust control plan. Therefore, whether the operator's plan is adequate could be readily determined without an administrative appeal procedure. However, commenters still expressed concern that a District Manager could arbitrarily determine to not approve a respirable dust control plan. These commenters maintained that an operator would have no recourse in such a case, unless appeal procedures are included in the final rule.

MSHA is not convinced at this time that a formal administrative appeal procedure should be made part of the final rule. The final rule provides specific and objective requirements for what must be contained in a respirable dust control plan. Primarily, the plan must include a description of the respirable dust control measures used to abate the violation, and how each of these control measures will continue to be used by the operator. With respect to this latter requirement, the operator is required under the rule to state at least the specific time, place and manner that the controls will be used. In addition, the final rule provides the District Manager with guidelines to follow when approving respirable dust control plans. The District Manager is required to consider whether the operator's compliance with the dust control plan can be objectively ascertained by MSHA. If the time, place and manner in which the operator's dust control measures will be used is described in the plan, as required by the rule, this consideration is satisfied. The District Manager is also directed to consider whether the respirable dust control measures described in the plan are likely to maintain compliance with the respirable dust standard. This consideration can be objectively ascertained through additional sampling conducted by MSHA.

In view of the objective requirements in the rule for what must be contained in a respirable dust control plan and the provision for additional sampling to determine the effectiveness of a plan, the final rule does not include a formal procedure for appeal of a District Manager's decision to not approve an operator's dust control plan. However, MSHA will provide additional review of an operator's dust control plan on a case-by-case basis. This review will be informal and provided as the need arises.

Under the proposed rule, operators would have been required to submit a respirable dust control plan within 15 calendar days after a citation was issued for a violation of the respirable dust standard. The final rule, however, requires the dust control plan to be submitted within 15 calendar days after the citation is terminated. The effect of this revision is to allow the operator to abate the violation and achieve compliance with the respirable dust standard, prior to writing the respirable dust control plan. MSHA believes that this procedure is more appropriate than the proposal since the purpose of the respirable dust control plan is to set forth how the operator will continue to maintain compliance with the respirable dust standard after abatement of a violation has been achieved.

A few commenters asserted that a requirement for respirable dust control plans would constitute an unnecessary paperwork burden for operators. MSHA does not anticipate that approved dust control plans will be difficult to develop. As discussed above, the plan should state clearly what dust control methods were used by the operator to abate a violation and how these will continue to be applied. Fulfilling this requirement during a 15-day period after a citation is terminated should not be unduly burdensome for large or small operators. Moreover, MSHA believes that the requirement for respirable dust control plans is a necessary one. As discussed above, compliance with these dust control plans will be required by MSHA. As a result, the control of respirable dust to within a permissible concentration will become part of the mining system, significantly contributing to the protection of miners' health.

A few commenters also objected to the proposal that operators post on the mine bulletin board a copy of each current approved respirable dust control plan and also provide a copy of each approved plan to the representative of miners. These commenters suggested that one or the other of these requirements would satisfy the purpose of informing miners of what respirable dust controls should be in use at the mine. It was also noted that miners representatives are often routinely provided this type of information without it being a requirement of the rule.

The proposed posting requirement for approved respirable dust control plans was, as the commenters observed, intended to make the plans available to all the miners so that they would be knowledgeable in the dust control measures necessary at the mine. The additional proposed requirement of providing the representative of miners with a copy of each dust control plan also served this purpose. MSHA is satisfied that both requirements are not necessary in the final rule. Also, MSHA expects that operators will make the information contained in respirable dust control plans readily available to miner representatives who request this information. Therefore, the final rule does not require operators to provide a copy of dust control plans to the representative of miners, but each approved plan must be posted on the mine bulletin board.

Drafting Information

The principal persons responsible for preparing this rule are: William H. Sutherland and Glenn R. Tinney, Division of Health, Mine Safety and Health Administration and Edward P. Clair and Edward C. Hugler, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

Regulatory Analysis

It has been determined that this rule does not contain major provisions requiring the preparation of a regulatory analysis under Executive Order No. 12044, or the Department of Labor's final guidelines for implementation of the Executive Order (44 FR 5570, January 28, 1979).

Impact Statement

The Department of Labor has determined in accordance with the National Environmental Policy Act of 1969, as amended, and the Department's regulations implementing that statute, that this final rule is not a major Federal

action significantly affecting the quality of the human environment that requires an Environmental Impact Statement.

Dated: December 2, 1980.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

1. Part 71 of Subchapter O, Chapter I, Title 30, Code of Federal Regulations, is amended by revising Subparts A and B, redesignating Subparts C and D as Subparts H and I, and adding new Subparts C and D as set forth below.

Note.—The table of contents for redesignated Subparts H and I are set forth for the convenience of the user.

PART 71—MANDATORY HEALTH STANDARDS—SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

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71.208 Bimonthly sampling; designated work positions.
71.209 Respirable dust samples; transmission by operator.
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Subpart D—Respirable Dust Control Plans

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Subpart H—Airborne Contaminants

71.700 Inhalation hazards; threshold limit values for gases, dusts, fumes, mists, and vapors.
71.701 Sampling; general requirements.
71.702 Asbestos dust standard; measurement.

Subpart I—Noise Standard

71.800 Noise standard; general requirements.
71.801 Measurement of noise levels.
71.802 Initial noise survey.
71.803 Periodic noise level survey.
71.804 Supplemental noise level survey; reports and certification.
71.805 Violation of noise standard; notice of violation; action required by operator.

Authority: Sections 101 and 103(h) of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 and 1299 (30 U.S.C. 811 and 813(h)).

Subpart A—General

§ 71.1 Scope.

This Part 71 sets forth mandatory health standards for each surface coal mine and for the surface work areas of each underground coal mine subject to the Federal Mine Safety and Health Act of 1977.

§ 71.2 Definitions.

For the purpose of this Part 71, the term;

(a) "Act" means the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173, as amended by Pub. L. 95–164.

(b) "Active workings" means any place in a surface coal mine or the surface work area of an underground coal mine where miners are normally required to work or travel.

(c) "Certified person" means an individual certified by the Secretary in accordance with § 71.202 (Certified person; sampling) to take respirable dust samples required by this part or certified in accordance with § 71.203 (Certified person; maintenance and calibration) to perform the maintenance and calibration of respirable dust sampling equipment as required by this part.

(d) "Concentration" means a measure of the amount of a substance contained per unit volume of air.

(e) "Designated work position" means a work position designated under § 71.208 (Bimonthly sampling; designated work positions).

(f) "District Manager" means the manager of the Coal Mine Safety and Health District in which the mine is located.

(g) "MRE instrument" means the gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

(h) "MSHA" means the Mine Safety and Health Administration of the Department of Labor.

(i) "Normal work shift" means (1) a shift during which the regular duties of the designated work position are performed while routine day-to-day mining activities are occurring in the rest of the mine and (2) a shift during which there is no rain, or, if rain occurs, the rain does not suppress the respirable dust to the extent that sampling results will be measurably lower, in the judgment of the person certified under this part to conduct sampling.

(j) "Quartz" means crystalline silicon dioxide (SiO_2) not chemically combined with other substances and having a distinctive physical structure.

(k) "Respirable dust" means dust collected with a sampling device approved by the Secretary and the Secretary of Health and Human Services in accordance with Part 74 (Coal Mine Dust Personal Sampler Units) of this title. Sampling device approvals issued by the Secretary of the Interior and Secretary of Health, Education and Welfare are continued in effect.

(l) "Secretary" means the Secretary of Labor or a delegate.

(m) "Surface area" means a specific physical portion of a surface coal mine or surface area of an underground coal mine. These areas are assigned a four digit identification number by MSHA.

(n) "Surface coal mine" means a surface area of land and all structures, facilities, machinery, tools, equipment, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, including custom coal preparation facilities.

(o) "Surface installation" means any structure in which miners work at a surface coal mine or surface work area of an underground coal mine.

(p) "Surface work area of an underground coal mine" means the surface areas of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, excavations, and other property, real or personal, placed in, upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting bituminous coal, lignite, or anthracite from its natural deposits underground by any means or method, and the work of preparing the coal so extracted, including custom coal preparation facilities.

(q) "Surface worksite" means any area in which miners work at a surface coal mine or surface work area of an underground coal mine.

(r) "Valid respirable dust sample" means a respirable dust sample collected and submitted as required by this part, and not voided by MSHA.

(s) "Work position" means an occupation identified by an MSHA code number describing a location to which a

miner is assigned in the performance of his or her normal duties.

Subpart B—Dust Standards

§ 71.100 Respirable dust standard.

Each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air. Concentrations shall be measured with an approved sampling device and expressed in terms of an equivalent concentration determined in accordance with § 71.206 (Approved sampling devices; equivalent concentrations).

§ 71.101 Respirable dust standard when quartz is present.

When the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner is exposed at or below a concentration of respirable dust computed by dividing the percent of quartz into the number 10. Concentrations shall be expressed in milligrams per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 71.206 (Approved sampling devices; equivalent concentrations).

Example. The respirable dust associated with a designated work position contains quartz in the amount of 20%, Therefore, the average concentration of respirable dust in the mine atmosphere associated with that designated work position shall be continuously maintained at or below 0.5 milligrams of respirable dust per cubic meter of air ($10/20=0.5$ mg/m^3).

Subpart C—Sampling Procedures

§ 71.201 Sampling; general requirements.

(a) Each operator shall take respirable dust samples of the concentration of respirable dust in the active workings of the mine as required by this part with a sampling device approved by the Secretary and the Secretary of Health and Human Services under Part 74 (Coal Mine Dust Personal Sampler Units) of this title.

(b) Sampling devices shall be worn or carried directly to and from the designated work position to be sampled and shall remain operational during the entire shift or for 8 hours, whichever time is less.

(c) Upon request from the District Manager, the operator shall submit the date on which collecting any respirable dust samples required by this part will begin.

(d) During the time for abatement fixed in a citation for violation of § 71.100 (Resipirable dust standard) or § 71.101 (Respirable dust standard when quartz is present), the operator shall take corrective action to lower the concentration of respirable dust to within the permissible concentration and then sample each normal work shift until five valid respirable dust samples are taken.

(e) Upon written request by the operator, the District Manager may waive the rain restriction for a normal work shift as defined in § 71.2 (Definitions) for a period not to exceed two months, if the District Manager determines that:

(1) The operator will not have reasonable opportunity to complete the respirable dust sampling required by this part without the waiver because of the frequency of rain; and

(2) The operator did not have reasonable opportunity to complete the respirable dust sampling required by this part prior to requesting the waiver.

§ 71.202 Certified person; sampling.

(a) The respirable dust sampling required by this part shall be done by a certified person.

(b) To be certified, a person shall pass the MSHA examination on sampling of respirable coal mine dust.

(c) A person may be temporarily certified by MSHA to take respirable dust samples if the person receives instruction from an authorized representative of the Secretary in the methods of collecting and submitting samples under this rule. The temporary certification shall be withdrawn if the person does not successfully complete the examination conducted by MSHA on sampling of respirable coal mine dust within six months from the issue date of the temporary certification.

§ 71.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.

(b) To be certified, a person shall pass the MSHA examination on maintenance and calibration procedures for respirable dust sampling equipment.

(c) A person may be temporarily certified by MSHA to maintain and calibrate approved sampling devices if the person receives instruction from an authorized representative of the Secretary in the maintenance and calibration procedures for respirable dust sampling equipment under this rule. The temporary certification shall be withdrawn if the person does not successfully complete the exmamination conducted by MSHA on maintenance and calibration procedures within six months from the issue date of the temporary certification.

§ 71.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under Part 74 (Coal Mine Dust Personal Sampler Units) of this title and calibrated in accordance with MSHA Informational Report No. 1121, "Standard Calibration and Maintenance Procedures for Wet Test Meters and Coal Mine Respirable Dust Samplers (Supersedes IR 1073)," by a person certified in accordance with § 71.203 (Certified person; maintenance and calibration).

(b) Approved sampling devices shall be calibrated at the flowrate of 2.0 liters of air per minute, or at a different flowrate as prescribed by the Secretary and the Secretary of Health and Human Services for the particular device, before they are put into service and at intervals not to exceed 200 hours of operating time thereafter.

(c) A calibration mark shall be placed on the flowmeter of each approved sampling device to indicate the proper position of the float when the sampler is operating at a flowrate of 2.0 liters of air per minute or other flowrate prescribed by the Secretary and the Secretary of Health and Human Services for the particular device. The standard to denote proper flow is when the lowest part of the float is tangent to the top of the calibration mark.

(d) Approved sampling devices shall be tested and examined immediately before each sampling shift and necessary external maintenance shall be performed to assure that the sampling devices are clean and in proper working condition by a person certified in accordance with § 71.202 (Certified person; sampling) or § 71.203 (Certified person; maintenance and calibration). This testing and examination shall include the following:

(1) Testing the voltage of each battery while under actual load to assure the battery is fully charged. The voltage for nickel cadmium cell batteries shall not be lower than the product of the number of cells in the battery pack multiplied by 1.25. The voltage for other than nickel cadmium cell batteries shall not be lower than the product of the number of cells in the battery pack multiplied by the manufacturer's nominal voltage per cell value;

(2) Examination of all components of the cyclone to assure that they are clean and free of dust and dirt;

(3) Examination of the inner surface of the cyclone on the approved sampling device to assure that it is free of scoring;

(4) Examination of the external tubing on the approved sampling device to assure that it is clean and free of leaks; and,

(5) Examination of the clamping and positioning of the cyclone body, vortex finder and cassette to assure that they are rigid, in alignment, and firmly in contact.

(e) In accordance with 5 U.S.C. 552(a), MSHA Informational Report No. 1121 referenced in paragraph (a) of this section is hereby incorporated by reference and made a part of this section as if it was set forth in full. The incorporated publication is available without charge at each Coal Mine Safety and Health District and Subdistrict Office of MSHA and is on file at the Office of the Federal Register Information Center. Any future amendments to MSHA Information Report No. 1121 will be announced in the **Federal Register.** This incorporation by reference was approved March 25, 1980, by the Director of the Office of the Federal Register.

§ 71.205 Approved sampling devices; operation; air flowrate.

(a) Sampling devices approved in accordance with Part 74 (Coal Mine Dust Personal Sampler Units) of this title shall be operated at the flowrate of 2.0 liters of air per minute, or at a different flowrate as prescribed by the Secretary and the Secretary of Health and Human Services for the particular device.

(b) Each approved sampling device shall be examined each shift by a person certified in accordance with § 71.202 (Certified person; sampling) during the second hour after being put into operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments shall be made by the certified person.

(c) Each sampling device shall be examined each shift by a person certified in accordance with § 71.202 (Certified person; sampling) during the last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the dust data card stating that the proper flowrate was not maintained.

§ 71.206 Approved sampling devices; equivalent concentrations.

The concentration of respirable dust shall be determined by dividing the weight of dust in milligrams collected on the filter of an approved sampling device by the volume of air in cubic meters passing through the filter and then converting that concentration to an equivalent concentration as measured with an MRE instrument. To convert a concentration of respirable dust as measured with an approved sampling device to an equivalent concentration of respirable dust as measured with an MRE instrument, the concentration of respirable dust measured with the approved sampling device shall be multiplied by the constant factor prescribed by the Secretary for the approved sampling device used, and the product shall be the equivalent concentration as measured with an MRE instrument.

§ 71.207 [Reserved]

§ 71.208 Bimonthly sampling; designated work positions.

(a) Each operator shall take one valid respirable dust sample from each designated work position during each biomonthly period beginning with the bimonthly period of February 1, 1981. The bimonthly periods are:
February 1–March 31
April 1–May 31
June 1–July 31
August 1–September 30
October 1–November 30
December 1–January 31

(b) When the respirable dust standard is changed in accordance with §71.101 (Respirable dust standard when quartz is present), respirable dust sampling of designated work positions shall begin on the first normal work shift during the next bimonthly period following notification of such change from MSHA.

(c) Upon notification from MSHA that any respirable dust sample taken from a designated work position to meet the requirements of paragraph (a) or (b) of this section exceeds the applicable standard in § 71.100 (Respirable dust standard) or § 71.101 (Respirable dust standard when quartz is present), the operator shall take five valid respirable dust samples from that designated work position within 15 calendar days. The operator shall begin such sampling on the first day on which there is a normal work shift following the day of receipt of notification.

(d) Upon issuance of a citation for a violation of § 71.100 (Respirable dust standard) or § 71.101 (Respirable dust standard when quartz is present) involving a designated work position, paragraphs (a), (b), and (c) of this section shall not apply to that designated work position until the violation is abated in accordance with § 71.201(d) (Sampling; general requirements).

(e) The District Manager shall designate the work positions at each surface coal mine and surface work area of an underground coal mine for respirable dust sampling under this section. The District Manager shall designate for sampling each work position at the mine where an average concentration of respirable dust exceeding 1.0 milligram per cubic meter of air has been measured by one or more samples. Where the respirable dust standard is below 1.0 milligram per cubic meter of air in accordance with § 71.101 (Respirable dust standard when quartz is present), the District Manager shall designate for sampling each work position where an average concentration of respirable dust exceeding the applicable standard has been measured by one or more samples.

(f) The District Manager shall withdraw the designation of a work position for sampling upon finding that the operator is able to maintain continuing compliance with the applicable respirable dust standard under § 71.100 (Respirable dust standard) or § 71.101 (Respirable dust standard when quartz is present). This finding shall be based on the results of samples taken during at least a one-year period under this part and by MSHA.

(g) Unless otherwise directed by the District Manager, designated work position samples shall be taken by placing the sampling device as follows:

(1) Equipment operator. On the equipment operator or on the equipment within 36 inches of the operator's normal working position;

(2) Non-equipment operators. On the miner assigned to the designated work position or at a location that represents the maximum concentration of dust to which the miner is exposed.

(h) Each designated work position sample shall be taken on a normal work shift. If a normal work shift is not achieved, the respirable dust sample shall be transmitted to MSHA with a notation by the person certified in accordance with § 71.202 (Certified person; sampling) that the sample was not taken on a normal work shift. When a normal work shift is not achieved, the sample for that shift may be voided by MSHA. However, any sample, regardless of whether a normal work shift was achieved, with a respirable dust concentration greater than 2.5 milligrams per cubic meter of air will be used to determine the average

concentration for that designated work position.

§ 71.209 Respirable dust samples; transmission by operator.

(a) The operator shall transmit within 24 hours after the end of the sampling shift all samples collected to fulfill the requirements of this part in containers provided by the manufacturer of the filter cassette to: Respirable Dust Processing Laboratory, Pittsburgh Technical Support Center, 4800–D Forbes Avenue, Pittsburgh, Pennsylvania 15213, or to any other address designated by the District Manager.

(b) The operator shall not open or tamper with the seal of any filter cassette or alter the weight of any filter cassette before or after it is used to fulfill the requirements of this part.

(c) A person certified in accordance with § 71.202 (Certified person; sampling) shall properly complete the dust data card that is provided by the manufacturer for each filter cassette. The card shall have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card shall be signed by the certified person and shall include that person's certification number. Respirable dust samples with data cards not properly completed will be voided by MSHA.

(d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of Parts 70, 71 or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by Parts 70, 71 or 90 of this title.

(e) Respirable dust samples received by MSHA in excess of those required by this part shall be considered invalid samples.

§ 71.210 Respirable dust samples; report to operator; posting.

(a) The Secretary shall provide the operator with a report of the following data on respirable dust samples as soon as practicable:

(1) The mine identification number;

(2) The designated work position at the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed in milligrams per cubic meter of air, for each valid sample;

(4) The average concentration of respirable dust, expressed in milligrams per cubic meter of air, for all valid samples; and

(5) The reason for voiding any samples.

(b) Upon receipt, the operator shall post this data for at least 31 days on the mine bulletin board.

§ 71.220 Status change reports.

(a) If there is a change in operational status that affects the respirable dust sampling requirements of this part, the operator shall report the change in operational status of the mine or designated work position to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing within 3 working days after the status change has occurred.

(b) Each specific operational status is defined as follows:

(1) Underground mine:

(i) Producing—has at least one mechanized mining unit producing material.

(ii) Nonproducing—no material is being produced.

(iii) Abandoned—the work of all miners has been terminated and production activity has ceased.

(2) Surface mine:

(i) Producing—normal activity is occurring and coal is being produced or processed or other material or equipment is being handled or moved.

(ii) Nonproducing—normal activity is not occurring and coal is not being produced or processed or other material or equipment is not being handled or moved.

(iii) Abandoned—the work of all miners has been terminated and all activity has ceased.

(3) Designated work position:

(i) Producing—normal activity is occurring.

(ii) Nonproducing—normal activity is not occurring.

(iii) Abandoned—the dust generating source has been withdrawn and activity has ceased.

Subpart D—Respirable Dust Control Plans

§ 71.300 Respirable dust control plan; filing requirements.

(a) Within 15 calendar days after the termination date of a citation for violation of § 71.100 (Respirable dust standard) or § 71.101 (Respirable dust standard when quartz is present), the operator shall submit to the District Manager for approval a written respirable dust control plan applicable to the work position identified in the citation. The respirable dust control plan and revisions thereof shall be suitable to the conditions and the mining system of the coal mine and shall be adequate to continuously maintain respirable dust within the permissible concentration at the surface work position identified in the citation.

(b) Each respirable dust control plan shall include at least the following:

(1) The mine identification number and designated work position number assigned by MSHA, the operator's name, mine name, mine address, and mine telephone number and the name, address, and telephone number of the principal officer in charge of health and safety at the mine;

(2) The specific designated work position at the mine to which the plan applies;

(3) A detailed description of the specific respirable dust control measures used to abate the violation of the respirable dust standard; and

(4) A detailed description of how each of the respirable dust control measures described in response to paragraph (b)(3) of this section will continue to be used by the operator, including at least the specific time, place and manner the control measures will be used.

§ 71.301 Respirable dust control plan; approval by district manager and posting.

(a) The District Manager will approve respirable dust control plans on a mine-by-mine basis. When approving respirable dust control plans, the District Manager shall consider whether:

(1) The respirable dust control measures would be likely to maintain compliance with the respirable dust standard; and

(2) The operator's compliance with all provisions of the respirable dust control plan could be objectively ascertained by MSHA.

(b) MSHA may take respirable dust samples to determine whether the respirable dust control measures in the operator's plan effectively maintain compliance with the respirable dust standard.

(c) The operator shall comply with all provisions of each respirable dust control plan upon notice from MSHA that the respirable dust control plan is approved.

(d) The operator shall post on the mine bulletin board a copy of each current respirable dust control plan approved by the District Manager.

(e) The operator may review respirable dust control plans and submit proposed revisions to such plans to the District Manager for approval.

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30 CFR Part 90

Coal Miners Who Have Evidence of the Development of Pneumoconiosis

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule amends the mandatory health standards at 30 CFR Part 90 to provide miners who are employed at underground coal mines or surface work areas of underground coal mines and who have evidence of the development of pneumoconiosis the right to exercise an option to work in an area of a mine with an average respirable dust concentration at or below 1.0 milligrams per cubic meter of air (1.0 mg/m³). This option includes the right to retain the same rate of pay received in the miner's previous position plus any wage increases accruing to the new work classification; and, if assigned to a different position when the respirable dust concentration exceeds 1.0 mg/m³ in the miner's job, the right to work in an existing job on the same shift as the miner worked prior to being transferred. In addition, the operator employing Part 90 miners is required to conduct a bimonthly sampling program involving each Part 90 miner in accordance with revised sampling procedures. This final rule is an improved mandatory health standard intended to prevent the progression of pneumoconiosis among miners in the nation's coal mines.

EFFECTIVE DATE: February 1, 1981.

FOR FURTHER INFORMATION CONTACT: William H. Sutherland, Chief, Division of Health, Mine Safety and Health Administration, Room 818, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone (703) 235–1358.

SUPPLEMENTARY INFORMATION:

I. Background and Related Rulemaking

Section 203(b) of the Federal Coal Mine Health and Safety Act of 1969, Pub. L. 91–173 (Coal Act), established the right of miners employed at underground coal mines who have evidence of the development of pneumoconiosis to be afforded the option of transferring to a position in the mine which would expose the miner to low concentrations of respirable dust. Section 203(b)(2) of the Coal Act set the respirable dust standard for the area to which the miner is transferred at a level of 1.0 milligrams of respirable dust per cubic meter of air (1.0 mg/m³) or, if that level was unattainable, at the lowest attainable concentration below 2.0 mg/m³. Section 203(b)(3) provided that transferred miners must receive compensation at not less than the regular rate of pay received immediately prior to transfer.

Under the terms of section 201 of the Coal Act, the standards established by section 203(b) are interim mandatory health standards which may be superceded in whole or in part by improved mandatory health standards promulgated under the provisions of section 101 of the Coal Act. The Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95–164, amended the Coal Act but did not alter the interim mandatory health standards in section 203. This final rule is an improved mandatory health standard promulgated under section 101 of the Federal Mine Safety and Health Act of 1977 (the Act) and supercedes the interim standards established by section 203(b).

In April 1978, the Mine Safety and Health Administration (MSHA) began rulemaking under section 101 of the Act to improve the mandatory standards relating to underground coal miners who have evidence of the development of pneumoconiosis by circulating to interested persons for comment a draft proposal to revise 30 CFR Part 90.

Several comments were received on the draft and have been fully considered by MSHA in developing this rule. In addition to developing Part 90, MSHA has also been engaged in rulemaking to revise 30 CFR Part 70 pertaining to respirable dust in underground coal mines and 30 CFR Part 71 pertaining to respirable dust in surface coal mines and surface work areas of underground coal mines. A proposed rule for Part 70 was published on November 16, 1977, and public hearings were conducted in July 1978. Many of the provisions contained in the proposed Part 70 were virtually identical to corresponding provisions in the drafts of Part 71 and Part 90, particularly those concerning general sampling requirements, certified persons, maintenance and calibration, sampling devices, transmission of samples and reports of status changes. Consequently, written comments and oral testimony received concerning these provisions in Parts 70 and 71 were generally considered, where appropriate, in making revisions to Part 90.

In Parts II and III of the **Federal Register** of April 8, 1980 (45 FR 23990), the final rule for Part 70 and proposed rules for Parts 71 and 90 were published. The **Federal Register** also contained a proposed amendment to Part 70 which was identical to a provision concerning miner participation in the proposed sampling program under Parts 71 and 90. Public hearings on all three proposals were scheduled to be held in early June in four locations. However, in response to a number of requests and to allow interested parties the fullest opportunity to submit meaningful testimony, MSHA determined that separate public hearings should be held on the miner participation proposals. Accordingly, four public hearings on the issue of miner participation were scheduled for August 12 and 14, 1980, and were announced in the **Federal Register** of June 10, 1980 (45 FR 39310). The rulemaking record for the miner participation proposals alone remained open until August 29, 1980. A separate final rule concerning miner participation in the sampling program will be published at a later date.

Four public hearings on the proposed rules for Parts 71 and 90 were conducted as originally scheduled on June 3 and 5, 1980. Interested persons were given until June 20, 1980, to submit written comments, suggestions and objections to the proposals for Parts 71 and 90. This deadline was later extended to July 7, 1980, by notice give in the **Federal Register** of June 24, 1980 (45 FR 42333). The final rule for Part 71 is also published in today's **Federal Register**.

II. Summary of the Rule

A. Part 90 Miners

Section 203(a) of the Act requires the operator of an underground coal mine to cooperate with the Secretary of Health and Human Services (HHS) in making available to each underground coal miner the opportunity to have chest X-rays to detect the development of pneumoconiosis. This medical screening program is administered by the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health and Human Services. Once the X-rays are read and classified in a manner prescribed by the Secretary of HHS, the miner receives notification of the interpretation of the medical finding along with a letter from MSHA advising the miner of his or her rights. Under this rule, if the medical finding reported by the Secretary of HHS shows evidence of the development of pneumoconiosis, a miner employed at an underground mine or at a surface work area of an underground mine will be given the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed will not exceed 1.0 mg/m³ of air. A miner who exercises the option under this new rule will be referred to as a Part 90 miner.

When an eligible miner exercises the option to become a Part 90 miner for the

first time, the miner must inform MSHA by signing, dating and mailing the Exercise of Option Form provided. This requirement also applies to miners who were found eligible under the old section 203(b) program, but who never exercised the section 203(b) option, and now for the first time wish to exercise the option under this new Part 90. Once the option is exercised, the miner will receive protections with respect to lower respirable dust standards, retention of previous pay rate, future actual wage increases, and position and shift protection.

Any miner, who exercised the old section 203(b) option, then later either waived the option or stopped working at an underground coal mine and returns to work at an underground coal mine or at a surface work area of an underground coal mine, may re-exercise the option to work in a low dust area of a mine by sending a written request to MSHA. This right to re-exercise the Part 90 option also applies to Part 90 miners who in the future either waive the option or terminate employment at one mine and then return to work in an underground coal mine or at a surface work area of an underground coal mine.

A miner who is a section 203(b) miner on the date this rule becomes effective will automatically be considered by MSHA to be a Part 90 miner entitled to all rights under this part and will not have to send any notification to MSHA. Similarly, any Part 90 miner who is transferred by the operator to a position at another coal mine, even if a surface coal mine, will remain a Part 90 miner in his or her new position.

B. Respirable Dust Standards

The fundamental requirement of this new rule is that operators are required to continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each Part 90 miner is exposed at or below 1.0 mg/m^3 of air. It should be noted, however, that the presence of quartz in the mine atmosphere could result in a respirable dust standard set below 1.0 mg/m^3 of air.

Under this rule, twenty days after the operator receives a letter of notification from MSHA that a Part 90 miner is employed at the underground coal mine or at a surface work area of the underground coal mine, the operator is required to continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed at or below 1.0 mg/m^3 of air. In instances where the miner is already working in an atmosphere which complies with the 1.0 mg/m^3 standard, there will be no need to lower the dust concentration or to transfer the Part 90 miner to another position. The rule requires that the operator either implement control measures to lower the concentration of respirable dust in the position currently held by the affected miner to meet the 1.0 mg/m^3 standard, or transfer the Part 90 miner to an area of a mine where that miner will not be exposed to an average concentration of respirable dust which exceeds 1.0 mg/m^3 of air. If, after the 20th day after notification from MSHA that a Part 90 miner is employed at the mine, the average concentration of respirable dust in the mine atmosphere to which this miner is exposed exceeds 1.0 mg/m^3 of air, the standard will be violated.

Once an operator is notified by MSHA that a Part 90 miner is employed at the mine, the operator is given 20 calendar days to notify the District Manager in writing of the job to which the Part 90 miner will be assigned on the twenty-first calendar day. This notice shall specify the occupation and, if applicable, the mechanized mining unit associated with the work assignment.

The respirable dust standards are based on measurements with an MRE instrument (gravimetric sampling device with four channel horizontal elutriator). Therefore, when an approved sampling device is used for sampling, the concentration of respirable dust measured with the approved device will be converted by MSHA to an equivalent concentration of respirable dust as if measured with an MRE instrument. This conversion is accomplished by multiplying the concentration of respirable dust measured with the approved sampling device by the constant factor prescribed by the Secretary for that approved sampling device.

C. Transfer of the Part 90 Miner

Operators may choose to comply with the applicable respirable dust standard by transferring the affected Part 90 miner to a position in a low dust area of a mine. Under this rule, a transfer is any change in the work assignment of a Part 90 miner, and includes (1) any change in occupation code of a Part 90 miner; (2) any movement of a Part 90 miner to or from a mechanized mining unit; or (3) any assignment of a Part 90 miner to the same occupation in a different location at the mine. If, at any time, a Part 90 miner is transferred because the average concentration of respirable dust has exceeded permissible levels, the operator will be restricted in the choice of jobs to which the Part 90 miner may be assigned. This includes transfers which are a result of: (1) exercising the Part 90 option, or (2) excessive respirable dust concentration in the Part 90 miner's job after initial compliance with the respirable dust standard.

Under this rule, at any time an operator transfers a Part 90 miner in order to meet the respirable dust standard, the operator is required to assign the miner to an existing job at the same coal mine on the same shift or shift rotation as the job held by the miner immediately before the transfer. If the Part 90 miner agrees in writing, however, an operator may transfer the miner to another coal mine, a newly-created position or a position on a different shift or shift rotation which meets the respirable dust standard. The operator may transfer a Part 90 miner without regard to these job and shift limitations if the respirable dust concentration in the position of the Part 90 miner complies with the dust standard, but circumstances require changes in job assignments at the mine. Reductions in workforce or changes in operational methods at the mine may be the most likely situations which would affect job assignments. Any such transferred Part 90 miner would still be protected by all other provisions under this Part.

If an operator desires to transfer a Part 90 miner after initially complying with the respirable dust standard, the operator may do so only after giving the District Manager written notice of the transfer and the date on which it is to be effective.

D. Compensation of the Part 90 Miner

When a miner has exercised the Part 90 option or when a Part 90 miner is transferred, the miner will retain at least the previous hourly rate of pay and subsequently, will receive actual pay increases applicable to the assigned work classification. For example, if a Part 90 miner is transferred from a $6.00 per hour job to a $5.00 per hour job, the operator must continue to pay the Part 90 miner at least $6.00 per hour. If the pay rate at the new work classification is increased to $5.30 per hour, the operator must pay the Part 90 miner at least $6.30 per hour.

Similarly, economic protection is afforded a miner who exercises the Part 90 option after working at a temporary assignment. A miner temporarily employed at a job which is not the miner's regular work classification for a period of two months or more before exercising the Part 90 option will be paid the higher of the two rates once the option is exercised. If the temporary assignment is for less than two months, the operator must pay the Part 90 miner at least the regular work classification

rate regardless of the previous temporary wage rate.

A miner who is a section 203(b) miner on January 31, 1981, will retain the rate of pay which the miner is required to receive under the old section 203(b) program on the effective date of this new Part 90. Any future pay increases applicable to the miner's work classification must be paid to the miner.

There have been occasions where a miner has exercised the option to work in a low dust area of the mine but HHS discovered that due to a mistake there was not sufficient evidence of the development of pneumoconiosis to warrant the miner's eligibility to exercise the option. Under this rule, a transferred Part 90 miner who receives notification of ineligibility will remain in his or her current position at the applicable rate of pay received under Part 90 until one of two situations occurs. First, the affected miner and operator may agree in writing that the miner will be assigned to a different position or will remain in the current position. Upon assignment to the agreed-upon position, the miner will be compensated at not less than the regular rate of pay for the agreed-upon work assignment and Part 90 protections will terminate. Second, if a position at the same coal mine both in the same occupation and on the same shift in which the miner was employed immediately before exercising the Part 90 option becomes available, the operator is required to offer this position to the affected miner, unless the operator and the miner have previously agreed upon another work assignment. The miner will then have 15 days within which to accept or reject the available position. If the miner accepts the available position, the operator will be required to implement the reassignment and compensate the miner at not less than the regular rate of pay for the new work assignment. A miner's failure to act on the operator's offer of the available position within 15 days will operate as a rejection of the offer.

E. Waiver of Part 90 Rights

After the option to work in a low dust area of the mine has been exercised, a Part 90 miner may waive Part 90 rights in three ways: (1) by written notification to this effect to the Chief, Division of Health, Coal Mine Safety and Health, MSHA; (2) by the application for and acceptance of employment in an area of a mine which the miner knows exceeds the 1.0 mg/m³ respirable dust standard or the standard established by § 90.101; or (3) by refusing to accept another position at the same coal mine offered by the operator which meets both the applicable respirable dust standard and the shift requirements of § 90.102(a) after dust sampling in his or her position shows that the average respirable dust concentration has exceeded the respirable dust standard. If any doubt exists, MSHA may investigate to determine whether the miner's waiver was voluntary. Once rights are waived, the Part 90 miner's name will be removed from MSHA's active list of miners who have rights under Part 90. Any eligible miner may reactivate his or her Part 90 status by re-exercising the Part 90 option at any time and thereafter, receive full protection under this rule from the date of the re-exercise. When a waiver occurs because a Part 90 miner either accepts another position with a respirable dust concentration greater than 1.0 mg/m³ or the limit established by § 90.101, or because the miner refuses to accept another job at the same coal mine which complies with the provisions of this rule after sampling results show excessive dust levels in his or her position, the operator will be required under § 90.220 to report this waiver to MSHA.

F. Sampling of Part 90 Miners

Provisions for certified persons, maintenance, calibration, operation and air flowrate for sampling devices are identical to corresponding provisions in the final rules for Parts 70 and 71. For a complete discussion of these particular provisions, see the Supplementary Information discussion for Part 71 published in today's **Federal Register** and the Supplementary Information discussion for Part 70 published in the **Federal Register** of April 8, 1980 (45 FR 23990).

Similar to sampling provisions of Parts 70 and 71, this Part 90 requires each operator to collect respirable dust samples for each Part 90 miner at bimonthly intervals and submit the samples to MSHA for analysis to determine compliance with the applicable respirable dust standard. However, various provisions of the respirable dust sampling requirements under Part 90 differ significantly from current practices and from sampling procedures under Parts 70 and 71. Under this rule, after a miner has exercised the option to work in a low dust area, MSHA will notify the operator that a Part 90 miner is employed at the mine. The operator will then have 20 days to assure that the miner is working in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which the Part 90 miner is exposed does not exceed 1.0 mg/m³. Within an additional 15-day period, the operator is required to take five valid respirable dust samples upon which MSHA will determine compliance with the respirable dust standard. If the results of these five samples show compliance with the respirable dust standard, the operator will begin a bimonthly schedule of sampling with the next bimonthly period as set forth in the rule. If the results of the five samples show noncompliance with the respirable dust standard, the operator will be cited for a violation.

Two other situations dictate collection of an additional five valid respirable dust samples within 15 calendar days after notification to the operator. When a respirable dust sample taken for a Part 90 miner during a bimonthly period exceeds the 1.0 mg/m³ respirable dust standard or the respirable dust standard established by § 90.101, the operator will be required to submit an additional five valid respirable dust samples for the affected Part 90 miner. If the results of these five samples show noncompliance with the respirable dust standard, the operator will be cited for a violation, and the abatement process must begin. After initial compliance with the respirable dust standard, if any transfer of a Part 90 miner occurs, the operator will be required to take five valid respirable dust samples upon which MSHA will determine compliance with the respirable dust standard.

Whenever a citation is issued for violation of the respirable dust standard, abatement samples will be collected on the affected Part 90 miner, but bimonthly sampling under § 90.208 for that miner will cease until the violation is abated. During the time fixed for abatement of such violation, the operator will be required to take corrective action and take an additional five valid respirable dust samples for the affected Part 90 miner. Whether the violation has been abated will be determined on the basis of the first five valid respirable dust samples submitted during the reasonable time granted to abate the violation. Upon abatement of the violation, bimonthly sampling of the Part 90 miner must resume.

The new Part 90 also specifies general sampling requirements in the collection of respirable dust samples. All respirable dust samples collected by operators are required to be collected with a sampling device approved by the Secretary of Labor and the Secretary of HHS under Part 74 of Title 30, Code of Federal Regulations. Samples are to be taken while the Part 90 miner is performing normal work duties. The sampling device may be worn by the Part 90 miner, or it may be placed at

specified locations near the miner's job. Moreover, the sampling device is required to operate while worn or carried to and from the Part 90 miner's job and to operate during the entire shift or for 8 hours, whichever time is less. If requested by the District Manager, the operator must provide the date on which collection of respirable dust samples is scheduled to begin. Any change in the sampling status of a Part 90 miner, including interruptions in or renewal of sampling, must be reported in writing by the operator to a designated MSHA district office within three working days after the change in status occurs.

To satisfy the sampling requirements of the rule, operators are required to take "valid respirable dust samples." These are defined in the rule as respirable dust samples collected and submitted as required by this part, and not voided by MSHA. Voided or invalid samples will not satisfy the sampling requirements and operators will be required to collect and submit additional samples. Failure to take the required number of valid respirable dust samples under § 90.201, § 90.207, and § 90.208 will constitute a violation. Consequently, it is advantageous for operators to collect and submit the samples required for each bimonthly period during the first month of each bimonthy period. This allows ample opportunity to collect and submit additional samples if necessary. Respirable dust samples received by MSHA in excess of the number required by this part will be considered invalid samples.

G. Transmittal and Analysis of Samples.

After the end of a sampling shift the operator is required to transmit all samples collected to MSHA within 24 hours. Under the rule all respirable dust samples collected by an operator are deemed to be taken to fulfill the sampling requirements of Parts 70, 71 or 90 of Title 30, Code of Federal Regulations, unless the operator declared in writing to the District Manager prior to the intended sampling shift that the sampling filter cassettes were to be used for other purposes. Therefore, absent such a written declaration by the operator to the District Manager, all respirable dust samples collected by an operator are required under the rule to be submitted to MSHA within 24 hours after the end of the sampling shift.

Each sample transmitted by operators to MSHA is required to be accompanied by the appropriate completed dust data card. Data cards will be provided by the filter cassette manufacturer and each card will have an identification number corresponding with the filter cassette for which is was provided. All dust data cards submitted to MSHA are required to be completed and signed by a person certified under this rule to collect samples and include that person's certification number. Persons certified under Part 70 or 71 may also perform the duties of a certified person under this part without further certification.

Upon receipt, MSHA will analyze samples submitted by operators as quickly as practicable. Following this analysis MSHA will provide the operator with a respirable dust sample data report. The data report will include identification of the mine and mechanized mining units, if any, from which the samples were taken; the concentration of respirable dust for each valid respirable dust sample; the occupation codes; the social security number of the Part 90 miner; and the reason for voiding any samples. Upon receipt, the operator is required to provide a copy of this report to the Part 90 miner, but is prohibited from posting the original or a copy of this report on the mine bulletin board.

H. Respirable Dust Control Plans

When an operator has been cited for a violation of the respirable dust standard, the operator must choose one of two courses of remedial action to abate the violation: either to transfer the affected Part 90 miner to a different position which meets the dust standard; or, to reduce the average concentration of respirable dust in the position of the Part 90 miner to meet the applicable dust standard. If the operator reduces the respirable dust level in the Part 90 miner's job to abate the violation, rather than transfer the miner, the operator must submit a written respirable dust control plan for the Part 90 miner. The plan must be submitted to the District Manager within 15 calendar days after termination of the citation. For purposes of approval, the plan must be adequate to continuously maintain compliance with the dust standard for the Part 90 miner. In addition, the rule requires that other pertinent information be contained in the respirable dust control plan. This includes a detailed description of the specific respirable dust control measures designed by the operator, and the specific time, place, and manner that the control measures will be used. Failure to follow the respirable dust control plan will constitute a violation. Each operator is required to provide each Part 90 miner with a copy of the current approved respirable dust control plan for that Part 90 miner. Neither the original nor a copy of the plan may be posted on the mine bulletin board.

III. Discussion of Major Issues

General

Pneumoconiosis is a chronic dust disease of the lung which may result in pulmonary impairment, respiratory disability, and death. Once contracted, the disease is irreversible.

In enacting section 203(b) of the Act, Congress recognized that human suffering, including individual and societal costs, result from the continued exposure of miners with pneumoconiosis to high levels of respirable dust. To protect miners who have evidence of pneumoconiosis but who may desire or find it necessary to remain working at coal mines, Congress sought to minimize the risk that further health impairment would occur. However, MSHA data show that of miners who have qualified for the option to transfer under section 203(b), only a small percentage have exercised their rights. Testimony and written comments indicated that major barriers existed under the old program, thereby discouraging miners from exercising their option. Reluctance to participate in the transfer program was attributable to significant sacrifices which miners perceived were a result of exercising their option. The 203(b) transfer program has proven to be only partially effective in carrying out the intention of Congress in enacting the provision.

Under the Federal Mine Safety and Health Act of 1977, MSHA is obligated to develop new health standards to improve the protection of the nation's miners. In this case, MSHA is achieving that objective by improving the interim mandatory health provisions of section 203(b), specifically, by providing incentives to increase participation in the Part 90 program. To remedy inadequacies in the old section 203(b) program, this rule provides eligible miners with significant additional protections against fears about job security, adverse economic consequences, undesirable working hours, wages and work assignments.

As an alternative method of improving the health protection of miners. MSHA considered the appropriateness of providing for the mandatory transfer of miners who have evidence of pneumoconiosis. However, MSHA received several comments from labor and industry representatives expressing unanimous opposition to any mandatory transfer provisions. Commenters felt that a mandatory transfer program would: create severe enforcement problems; create hostility towards the program, resulting in possible work stoppages; create distrust of MSHA; violate the confidentiality of the X-ray

program by revealing information about a miner's medical condition; and decrease participation in the NIOSH medical surveillance program, depriving the miners of information about their health and depriving NIOSH of important epidemiological data. In view of the possible problems with a mandatory transfer provision, the rule retains the option to exercise Part 90 rights and is intended to encourage more miners to exercise the option. However, MSHA will monitor participation rates over the next three years, and if the number of miners exercising the Part 90 option does not substantially increase, MSHA will reconsider the appropriateness of a mandatory transfer program.

Section 90.3, Part 90 option; notice of eligibility; exercise of option

During the course of the comment period, several issues were raised concerning which miners should qualify for coverage under Part 90. Some commenters supported while others opposed extension of the X-ray program administered by NIOSH to include surface miners. Several requests were also made to expand medical criteria used as evidence for determining the existence of pneumoconiosis by accepting other medically-approved diagnostic tests in addition to X-ray evidence. In addition, some commenters requested that all surface coal miners who have evidence of pneumoconiosis be afforded the opportunity to exercise the Part 90 option.

Pursuant to section 203(a) of the Act and to regulations promulgated by HHS under 42 CFR Part 37, the current X-ray program is limited to coal miners who are employed at underground coal mines. The medical criteria and tests used in diagnosing pneumoconiosis are also governed by these regulations. As originally proposed, this new Part 90 was limited to miners employed at underground coal mines who have evidence of pneumoconiosis. While MSHA recognizes that under section 101, the Secretary of Labor has the authority to expand the scope of Part 90 beyond the specific provisions of section 203 of the Act, the regulation proposed by MSHA did not contain any changes involving the extension of the X-ray program or of the Part 90 option to surface coal miners or the expansion of the medical criteria. These issues are so fundamentally different than what was proposed that no changes concerning these subjects are made in this final rule. In the interests of fairness to all persons who might be affected by changes of this nature and to assure that there is a full opportunity to address the issues involved, MSHA will, in cooperation with NIOSH, develop a proposed rule which will specifically address surface miners and medical criteria.

However, this rule does make it clear that any miner employed at an underground coal mine or at a surface work area of an underground coal mine who, in the judgment of the Secretary of HHS, has evidence of the development of pneumoconiosis shall be afforded the Part 90 option and all rights accruing under this Part. In addition, any miner employed at an underground coal mine or at a surface work area of an underground coal mine who was eligible to exercise the option to transfer under the section 203(b) program may exercise the option under this new Part 90 and be entitled to all rights under this Part.

Furthermore, it has come to MSHA's attention that underground coal miners who exercised their option to transfer under the old program were sometimes moved by the operator to surface jobs at the underground mine and removed from the protections of the section 203(b) program. In addition, section 203(b) miners who were transferred by the operator to jobs at surface coal mines were not protected under the section 203(b) program. In certain cases, this may have meant that affected miners were not sampled thereafter for respirable dust exposure. MSHA believes that if a miner is identified as having a sufficient degree of pneumoconiosis to warrant respirable dust protection, periodic sampling of the miner is required to assure that permissible dust levels are maintained. Although the incidence of pneumoconiosis among miners in surface occupations is thought to be less than that of underground miners, dust levels in certain surface jobs, for example, at cleaning and preparation plants, may frequently exceed average respirable dust concentrations of 1.0 mg/m^3. Accordingly, under this rule, any Part 90 miner who is transferred by the operator to any surface position, including positions at surface coal mines, remains a Part 90 miner in the new surface job and is entitled to all Part 90 protections.

Representatives of mine operators commented that a review system should be established to allow operators to challenge the determination that a miner has evidence of the development of pneumoconiosis. It was noted that a significant percentage of results from Round Two of the NIOSH X-ray program apparently showed disease regression. NIOSH addressed this problem of false positive interpretations in the reading of X-ray results in the recent amendment to 42 CFR Part 37.7 (44 FR 23084, 23085, April 18, 1979). According to NIOSH, other revisions to Part 37, 43 FR 33713 (August 1, 1978), set forth the procedures for making, classifying, and submitting coal miners' examinations in all future rounds and includes provisions to safeguard against false positive interpretations. Under the NIOSH rule, all final interpretations for pneumoconiosis are based on agreement between two physicians. Further interpretations are available if a miner requests a reevaluation or if a coal mine operator requests NIOSH to review the medical findings of the most recent examination of a miner. NIOSH is satisified that these procedures adequately assure that X-rays are classified accurately. Accordingly, this final rule does not contain a review system for operators to challenge X-ray results.

A few commenters claimed that the letter which notifies a miner of his or her eligibility to exercise the Part 90 option should contain information concerning the level of respirable dust at the miner's current job. It was argued that, without this data, a miner will not be able to make an informed choice as to whether to exercise the option. It was also stated that to preserve confidentiality of the X-ray results of the miner, the eligible miner should not be required to exercise the option, resulting in notification to the operator of the miner's medical condition, before knowing the level of respirable dust in his or her present job. Labor representatives feared that miners already working in atmospheres of 1.0 mg/m^3 or less who exercise their rights would be subject to retaliation by their employers.

MSHA believes that an eligible miner will have access to various sources of information which will indicate the level of respirable dust at his or her job. Under Parts 70 and 71, the operator is required to post for at least 31 days on the mine bulletin board results of bimonthly respirable dust samples from designated occupations in each mechanized mining unit and from each designated area in underground coal mines, and from each designated work position at surface work areas of underground coal mines. Although this may not mean that a sample was taken at the eligible miner's job, it will indicate the respirable dust level in the dustiest areas of the mine. In addition, representatives of miners may request from the District Manager the operator's ventilation and dust control plans which

have been submitted under § 75.316 and Part 71.

Moreover, a miner may bring a discrimination action under section 105(c) of the Act if any operator retaliates against a miner who is the subject of medical evaluations and potential transfer under this rule. Accordingly, this rule does not require information regarding a miner's dust exposure be provided with the letter which notifies the miner of eligibility.

Based on comments received and on existing MSHA policy, a section was added to clarify that a Part 90 miner who terminates employment at an underground coal mine or at a surface work area of an underground coal mine and begins employment at another underground coal mine or at a surface work area of another underground coal mine is not a Part 90 miner at the new mine until the Part 90 option is re-exercised. MSHA will notify the operator of a miner's status as a Part 90 miner only when the miner elects to exercise the option. In addition, this rule forbids an operator to require from a miner a copy of the medical information received from the Secretary of Labor or the Secretary of HHS. This provision is contained in the old section 203(b) program and is added to the final rule because MSHA believes that it is necessary to preserve the confidentiality of the results of a miner's medical examinations.

A few commenters urged that a miner be required to exercise the Part 90 option within a specified time after receiving the notice of eligibility. MSHA believes that limiting the time within which a miner must exercise the option is contrary to the legislative intent of the Act and to the welfare of a miner who shows evidence of pneumoconiosis. Additionally, any time restrictions placed on the exercise of the option would make it less likely that miners would participate in the program.

Section 90.100, Respirable dust standard.

The final rule retains the mandatory respirable dust standard for Part 90 miners at or below an average concentration of 1.0 mg/m³ of air. Several commenters commended MSHA for specifying that a Part 90 miner may not be in an atmosphere in which he or she is exposed to respirable dust levels exceeding 1.0 mg/m³ of air. In practical effect, this new Part 90 does not change the respirable dust standard established by the Act. Section 203(b) of the Act provides that an eligible miner exercising the option to transfer shall be transferred to a position in the mine where the respirable dust in the atmosphere is not more than 1.0 mg/m³ "or if such level is not attainable in such mine, to a position in such mine where the concentration of respirable dust is the lowest attainable below 2.0 mg/m³." The premise of this final rule is that the 1.0 mg/m³ respirable dust standard is attainable at all mines. MSHA believes that the improved mandatory health standard of 1.0 mg/m³ as set forth in this rule is neither burdensome nor impracticable for mine operators to meet. MSHA has no evidence suggesting that it would not be feasible for operators to comply with the respirable dust standard in Part 90.

Under this rule, 20 days after the operator receives a letter of notification from MSHA that a Part 90 miner is employed at the underground coal mine, the operator is required to continuously maintain the average concentration of respirable dust in the mine atmosphere to which that miner is exposed at or below 1.0 mg/m³ of air. Although the proposal, which was supported by several commenters, would have required that corrective action be taken within 15 days, other commenters representing industry stated that this is an insufficient amount of time. These commenters felt that a 45-day time period is necessary to accommodate ventilation changes and respirable dust control measures. In addition, they argued that in some cases samples will have to be collected in a new position to assure compliance and new work schedules and training requirements for Part 90 miners and for miners who will replace or be replaced by the transferred Part 90 miner will have to be developed. It was also argued that 30 days additional exposure to respirable dust would subject miners to minimal adverse health effects. MSHA recognizes that in some instances, a miner who has exercised the Part 90 option will already be working in an atmosphere which complies with the 1.0 mg/m³ standard. Thus, there will be no need to lower the dust concentration in that position or to reassign the miner. However, in cases where corrective action is required, MSHA believes that increasing the 15-day period to 20 days is reasonable and provides the operator with sufficient time within which to comply with provisions under this part. MSHA's position is that an operator should take prompt action to reduce the length of time miners are exposed to excessive dust levels and to determine what measures should be taken in order to meet obligations under Part 90. Moreover, if dust control measures in the position of the Part 90 miner are impracticable, the operator should already be familiar with positions in the mine in which compliance with the respirable dust standard is attainable.

Section 90.101, Respirable dust standard when quartz is present.

A few commenters suggested revision of the existing standard for respirable dust when quartz is present. Revision of the quartz standard was not included in the proposal and is not adopted in this final rule. NIOSH recommended a standard of 50 micrograms of free crystalline silica per cubic meter of air. This standard would require the average concentration of respirable dust to be reduced below 2.0 mg/m³ of air when the free silica present exceeded .050 milligrams per cubic meter of air. Converted to an MRE equivalent, this would be .070 milligrams per cubic meter of air.

NIOSH's recommended standard was proposed as a revision to 30 CFR Part 70 (Respirable dust sampling in underground coal mines) (42 FR 59294). It was not adopted, however, for the reasons discussed in the preamble to the final rule for Part 70, published in the **Federal Register** of April 8, 1980 (45 FR 23990). Briefly, although MSHA has placed high priority on developing a silica standard for mining, it was concluded that the existing standard for quartz should not be revised until NIOSH develops a criteria document specifically addressing the silica exposure hazard in the mining industry. NIOSH is now developing these criteria which will provide valuable information regarding permissible exposure limits and equally important matters such as sampling procedures and medical examinations of exposed miners.

Section 90.102, Transfer; notice.

The proposal stated that whenever a Part 90 miner was transferred, the operator would be required to assign the miner to an existing position on the same shift as employed immediately before the transfer, unless written agreement to a different assignment from the miner was received. Several commenters commended MSHA for directing operators to provide job and shift protections to Part 90 miners. Testimony at the public hearings indicated that some miners were given undesirable work assignments and hours after they had exercised their option to transfer under the old section 203(b) program. However, a significant number of commenters expressed concern that this requirement was unnecessarily stringent and would diminish the feasibility of the regulations by severely limiting the job assignments to which a Part 90 miner

could be placed. MSHA is committed to increasing participation rates and assuring respirable dust protection for Part 90 miners. At the same time, MSHA is also concerned with designing a program which is practicable. Careful consideration of this proposal and related testimony has convinced MSHA that the success of the Part 90 program will not be jeopardized by giving a margin of latitude to operators who, in good faith, attempt to find suitable jobs for affected miners. In instances where operators need to reassign employees to accommodate unforeseen situations and unexpected mine and market conditions, MSHA believes that some leeway should be provided to assist operators in placement of a Part 90 miner. Accordingly, when the respirable dust standard in the Part 90 miner's position has been exceeded, and the operator chooses to comply with the applicable respirable dust standard by transferring the affected miner, the operator will be required to afford job and shift protections to this miner. In that instance, the operator will be required to assign the miner to an existing position at the same coal mine on the same shift or shift rotation as the one on which the miner was employed immediately before the transfer, unless the miner agrees in writing to be assigned elsewhere. Besides giving the operator some flexibility in placement of Part 90 miners, this revision of the proposal increases the likelihood that affected miners will continue working and not be laid off when unusual adverse circumstances affect labor requirements.

While praising job and shift protections, some commenters urged MSHA to limit reassignment of Part 90 miners only to existing jobs which are vacant. It was argued that the rule should not allow the operator to "bump" a non-Part 90 miner out of his or her job and, perhaps, his or her shift in order to assign a Part 90 miner to the same position. According to such advocates, a sacrifice on the part of non-Part 90 miners would create animosity toward the Part 90 program. One commenter also suggested that in the event that no vacant existing position was available on the same shift as previously worked, the operator should temporarily assign the affected miner to a newly-created job on the same shift until a vacancy occurs in an existing position.

The final rule does not incorporate either of these suggestions. In some cases, it is presumed that if a vacant position exists which satisfies the requirements of the respirable dust standard and this section, the operator will assign the Part 90 miner to this available job. To do otherwise may create a chain reaction, whereby the "bumped" non-Part 90 miner will have to be reassigned and trained, and so will the miner who is replaced by this non-Part 90 miner, and so on. Therefore, obvious advantages will probably encourage the operator to assign the Part 90 miner to a vacant existing position. However, there will be occasions where an operator will reassign a Part 90 miner to a position currently held by a non-Part 90 miner. Moreover, if MSHA required the position to be vacant before assignment of a Part 90 miner could occur, the potential number of positions to which an operator could move a Part 90 miner would be significantly reduced. In concluding that Part 90 miners need job and shift protections to encourage participation, MSHA believes it is important to afford the operator ample opportunity to provide these new protections to affected miners.

The proposal would have required that a transferred miner be placed on the same shift as the one on which he or she was previously employed unless the miner agreed in writing to a different shift. A few commenters objected to an omission in the proposal to accommodate a transferred Part 90 miner who regularly works at a job on a shift which periodically rotates. Under this scheme of shift rotation, for example, some miners may work two weeks on the second shift and then be rotated to the third shift for two weeks. MSHA agrees that operators who transfer Part 90 miners to another work assignment should be allowed to continue to employ the affected miner on a schedule of shift rotation. The final rule, therefore, has been changed to include this modification.

One commenter voiced an objection to the proposed requirement under this section that prior written agreement of the affected Part 90 miner be obtained before assignment to a newly-created position or different shift. This prerequisite is adopted both for the protection of the operator as well as the miner. A written agreement indicates that the miner did, in fact, consent to work at a different coal mine, in a specially-created job or on a different shift in lieu of working in an existing position at the same mine on the same shift as previously employed. If any question as to the voluntariness of the assignment were to arise, the mine operator will have evidence at hand to show the operator's intent to comply with this provision and the miner's acceptance of the assignment. MSHA believes it is advisable to retain this requirement and has done so in the final rule.

The proposed rule would have prohibited an operator from assigning a Part 90 miner as a temporary replacement on a mechanized mining unit where the previous bimonthly sample exceeded 1.0 mg/m^3. Commenters objected to the rigidity of this prohibition because it assumed that the respirable dust concentration in the Part 90 miner's particular position on the mechanized mining unit would also be above 1.0 mg/m^3 and because it denied the operator the chance to demonstrate compliance with the 1.0 mg/m^3 standard on that particular position. MSHA has considered this objection and has revised the rule to give the operator flexibility in making temporary assignments without reducing the protection afforded Part 90 miners. Unlike the old section 203(b) program, under this new rule any assignment as a temporary replacement on a mechanized mining unit is considered a transfer, and the Part 90 miner must be sampled after each transfer. If the sample results show that the Part 90 miner was exposed to an average concentration of respirable dust exceeding 1.0 mg/m^3, the operator will be issued a citation and a civil penalty assessed. If the sample results demonstrate compliance, then no violation will have occurred.

Section 90.103. Compensation.

This final rule provides that when a miner exercises the Part 90 option, the operator is required to pay the miner at least the regular rate of pay received immediately before the miner exercised the option. In addition, whenever a Part 90 miner is transferred to another position, the operator shall pay the affected miner at least the regular rate of pay which the miner received immediately before the transfer. Based on several comments received, MSHA has concluded that a Part 90 miner should not suffer any loss in pay whenever an operator transfers the miner. If eligible miners perceived that their rate of pay could be decreased upon any transfer, the incentive to exercise the Part 90 option would be reduced.

A substantial number of comments received from both industry and labor objected to other compensation provisions contained in the proposal. Some commenters requested that reassigned Part 90 miners receive wages in their new work assignment as if they had remained in their former jobs. Under this result, a miner in his or her new work classification would receive wage increases commensurate with increases received in the old work

classification. This interpretation of the wage provisions of section 203(b) is supported by the decision in *Matala* v. *Marshall and Consolidation Coal Company*, 483 F. Supp. 1332 (N.D.W.Va. 1980), *appeal docketed*, Nos. 80–1287, 80–1288 (4th Cir. April 22, 1980). Other commenters indicated that the statutory mandate of section 203(b)(3) of the Act and case law developed under this section limit the wage increases which miners can receive. This latter group of commenters cited the decision in *Higgins* v. *Marshall*, 584 F. 2d 1035 (D.C. Cir. 1978), *cert denied*, 99 S.Ct. 2051 (1979) as authority to freeze an affected miner's wages in the new work assignment until the rate of compensation in the new position reaches the amount that was paid in the old position.

These comments reflect some confusion concerning the statutory basis upon which promulgation of this rule rests. This new rule is an improved mandatory health program promulgated under section 101 of the Act and as such, supercedes provisions contained in section 203(b). Neither the *Higgins* nor *Matala* holdings are applicable to the pay provisions specified under this new Part 90 as the issue in both of these cases involves the statutory interpretation of section 203(b) of the Act.

This new Part 90 authorizes a program which, although analogous to that offered under section 203(b), differs in significant ways from the old Part 90 program. The wage protection offered miners by this rule is consistent with section 101(a)(7) of the Act and the legislative history pertaining to the enactment of that section. By adopting section 101(a)(7), Congress recognized that miners may be forced to choose between continued exposure to hazardous substances or significant wage reduction if work in cleaner environments is sought. To correct this situation, section 101(a)(7) explicitly states that a reassigned miner retain at least the previous rate of pay received, and specifically addresses the issue of subsequent wage increases. However, rather than extending the full protection of wage increases to the miner's pre-assignment job classification, Congress purposefully placed a special limit on wage increases received by miners: ". . . increases in wages of the transferred miner shall be based upon the new work classification." The Conference Committee Report reflects Congressional concern that miners who participate in programs authorized under section 101(a)(7) and are reassigned jobs should not suffer "an immediate financial disadvantage." The Conference Report leaves no doubt that any increases in a transferred miner's wages are to be governed by the dollar rate increases in the new, rather than the old work classification.

The final rule retains the requirement that operators pay the higher of the temporary or regular rates of pay to a miner who exercised the Part 90 option while working in an occupation other than his or her regular work classification for two months or more. If the affected miner has worked in the temporary occupation for less than two months before exercising the Part 90 option, the operator may pay the miner at his or her regular work classification rate regardless of the temporary wage rate. MSHA has evidence of situations in which miners, who were temporarily employed for extended periods in occupations other than their regular jobs before exercising the option under the old section 203(b) program, were paid the wage rate associated with the lower paying job. MSHA believes that such a practice discourages participation in a program designed to prevent further development of pneumoconiosis.

A few commenters requested that miners who are section 203(b) miners on the effective date of this rule receive retroactive wage increases. MSHA is not persuaded that retroactive pay is justified. There appears to be no benefit in terms of enhanced health protection to be gained from applying the rule retroactively. However, MSHA does believe that those miners who are concerned about their health should not be at an economic disadvantage indefinitely solely because they exercised their 203(b) option before the effective date of this new Part 90. Therefore, the final rule clarifies that on February 1, 1981, and thereafter, any miner who was a section 203(b) miner will automatically become a Part 90 miner and be entitled to receive any future actual wage increases accruing to the miner's new job classification.

Some commenters criticized MSHA for affording limited protection to a Part 90 miner who is informed that notice of eligibility was incorrect. They felt that under these circumstances it penalizes the mine operator to give any pay protections to the affected miner. Some of these commenters also objected to any efforts to restrict the operator's choice in assigning this miner to a new position.

It is first important to emphasize that there will be very few instances in which a Part 90 miner will subsequently be declared ineligible for the option. According to NIOSH, the quality control of the X-ray surveillance program has been improved so that the chances that an incorrect X-ray reading will occur are negligible. Yet, if this were to occur, it is apparent that neither the operator nor the miner would be responsible for the mistake. MSHA seeks to minimize the disadvantages caused to both parties. After careful consideration of alternative measures, MSHA believes that the course of action adopted in this rule is reasonable. The intent of this provision is to maintain the status quo until such time as an equitable resolution between the miner and the operator is reached. Accordingly, the rule requires the operator to retain the miner in his or her current position at the applicable rate of pay received under Part 90 until one of two situations occurs. First, if the affected miner and operator agree in writing, the miner may be assigned to a different position or may continue in his or her current job. Second, absent such agreement, if a position at the same coal mine both in the same occupation and on the same shift in which the miner was employed immediately before exercising the Part 90 option becomes available, the operator is required to offer this position to the affected miner.

Section 90.104, Waiver of rights; re-exercise of option

The right to re-exercise the option to work in a low dust area of a mine was welcomed by some commenters as a means to encourage voluntary participation in efforts to prevent further development of pneumoconiosis. However, others expressed opposition to this provision because they felt it could be a source of possible abuse creating personnel problems at a mine. In this rulemaking process, MSHA has fully considered the pros and cons both of retaining the more limited right to re-exercise the option as it existed under the old section 203(b) program and of providing miners with the broader right to re-exercise the option as adopted under this new Part 90. Under the old 203(b) program, the option could be re-exercised only when a 203(b) miner left one mine and began employment at another mine or when another X-ray taken of the miner showed evidence of the development of pneumoconiosis.

MSHA does not believe that the policy under the old section 203(b) program provided adequate health protection for affected miners. A miner who once waived the option should not have to wait, perhaps several years, before another X-ray re-establishes the miner's eligibility for the option. The subsequent X-ray does nothing more than confirm the previous diagnosis of irreversible and frequently progressive

pulmonary impairment. MSHA believes that once a miner has been identified as having evidence of pneumoconiosis and an increased risk of sustaining progressive and permanent pulmonary impairment, that miner should be afforded the opportunity at any time to protect his or her health by re-exercising the Part 90 option.

Several commenters expressed concern that personnel problems would be increased by eligible miners re-exercising their option and moving from job to job until employed in the most desirable jobs. For several reasons, MSHA believes that it is unlikely that this practice of "jockeying" will occur. A miner who already has evidence of lung impairment should regard his or her health as an urgent priority. Increased health risks for this miner are associated with working in areas of a mine where the respirable dust levels exceed 1.0 mg/m^3 of air. The miner's concern in preventing progression of pneumoconiosis and in prolonging his or her productive life, whether at work or at home, should minimize any incentive to jockey between positions. Moreover, it may often be the case that an eligible miner is working in a high paying job before the option is exercised. Once the option is exercised, the right to retain the previous rate of pay combined with limited job and shift protections under this final rule should encourage the miner to stay in the low dust position at the mine.

One commenter criticized the proposed waiver provision for not requiring all waivers to be in writing. It was argued that without requiring a written waiver, the rule presumes that a Part 90 miner knows that the average respirable dust concentration in the position accepted exceeds 1.0 mg/m^3 of air. This commenter suggested that all waivers be accompanied by written documents containing information regarding the dust level in the job which the miner accepts and should explain the effect of the waiver and subsequent rights to re-exercise the option. MSHA does not believe that it is necessary or practical to provide the miner with the suggested information or to require that a miner give written notice of a waiver of Part 90 rights when the miner has accepted a job in which the respirable dust concentration exceeds 1.0 mg/m^3. As previously explained, miners already have access to various sources of information which indicate the dust level in many areas of a mine. Under Parts 70 and 71, bimonthly sampling results on designated occupations and areas, and designated surface work positions will be posted on the mine bulletin board for at least 31 days. In addition, a miner's representative at any mine may request and receive from a District Manager information concerning the current approved respirable dust control plan submitted under section 75.316 or Part 71. At many mines covered under a collective bargaining agreement, the available job classification is posted on the mine bulletin board and lists the concentration of respirable dust in that position. Moreover, MSHA does recognize the importance attached to a miner's waiver of Part 90 rights. Under the old section 203(b) program, when MSHA received notice of a waiver, an inspector would contact the affected miner to confirm that the miner knowingly and voluntarily terminated his or her status as a 203(b) miner. Unless a clear written waiver is received, MSHA will continue this practice under this new Part 90. Even in cases where a written waiver is submitted, an MSHA inspector may be aware of circumstances which would warrant examination of the facts surrounding a miner's waiver of Part 90 rights.

An additional paragraph has been added to the waiver provision in the final rule. Under this rule, if a Part 90 miner is assigned a position in which the concentration of respirable dust exceeds the dust standard and the miner refuses to accept another position offered by the operator which satisfies the respirable dust standard and requirements of § 90.102(a), the refusal will operate as a waiver by that miner of his or her Part 90 rights. This provision has been included because MSHA recognizes that there may be occasions where it is not feasible for the operator to attain a respirable dust concentration of 1.0 mg/m^3 in a particular position. Therefore, MSHA believes that this modification to the waiver provision is necessary.

Sections 90.201, 90.202, 90.203, 90.204, 90.205, 90.206, 90.209, 90.210, and 90.220, Sampling procedures

Comments which were received on these sections in the Part 90 proposal were virtually identical to comments received on corresponding provisions in Parts 70 and 71. For a complete discussion of these particular provisions, see the Supplementary Information discussion for Part 71 published in today's **Federal Register** and the Supplementary Information discussion for Part 70 in the **Federal Register** of April 8, 1980 (45 FR 23990).

Section 90.207, Compliance sampling

The proposal to revise the respirable dust sampling of Part 90 miners was supported by some commenters. A few commenters, however, objected to the 15-day time period prescribed in this section within which five additional samples are to be collected by the operator after: (1) the miner exercises the Part 90 option; (2) a bimonthly sample exceeds the applicable respirable dust standard; and (3) any transfer of a Part 90 miner is implemented 20 days following notification from MSHA that a Part 90 miner is employed at the mine. MSHA has concluded that the 15-day period is sufficient time because the operator is required to sample on only five shifts during which the Part 90 miner is performing normal work duties.

Section 90.208, Bimonthly sampling

Another commenter criticized the increased frequency for sampling Part 90 miners under the proposal. It was asserted that because Part 90 miners would be working in low dust areas of the mine, there was no need to sample Part 90 miners at the same bimonthly frequency as miners working in designated occupations, designated areas and designated surface work positions. This commenter urged that respirable dust sampling of Part 90 miners occur every 120 days instead of every 60 days. MSHA is not persuaded that sampling frequency should be reduced for Part 90 miners. Although Part 90 miners will be working in low dust jobs, these miners have a higher risk of suffering further permanent health impairment from continued exposure to high levels of respirable dust than do other miners. In view of potential aggravation of the disease, MSHA believes that more substantial evidence of continuing compliance with the respirable dust standard is warranted. Therefore, MSHA believes it is more appropriate to sample Part 90 miners on the more frequent schedule of once every 60 days.

Section 90.210, Respirable dust samples; report to operator

At least two commenters asserted that Part 90 miners should be notified directly of the results of their respirable dust samples. MSHA has fully considered this suggestion and has decided to supplement the method of informing Part 90 miners of their sampling results. Under this rule, operators are still required to provide a copy to each Part 90 miner of all reports of sampling results received from MSHA that apply to that miner. In addition,

MSHA will notify each Part 90 miner of respirable dust sampling results whenever a bimonthly sample submitted for that miner exceeds the standard. MSHA will also notify the affected Part 90 miner of the results of compliance sampling taken by the operator.

Sections 90.300 and 90.301, Respirable dust control plans

Although the provision to require respirable dust control plans was not a part of the Part 90 proposal, a comment was received from NIOSH in support of this requirement, and MSHA received related testimony concerning respirable dust control plans under Part 71. Under Part 90, if an operator chooses to abate a violation of the respirable dust standard by lowering the concentration of respirable dust in the Part 90 miner's job rather than reassign the miner, a written respirable dust control plan will be required to be submitted within 15 calendar days after termination of the citation to the District Manager for approval. The dust control plan must specify the dust control measures to be used by the operator to maintain compliance with the respirable dust standard, and, after MSHA approval, the operator will be required to comply with all provisions of the plan. In addition, a copy of the currently approved dust control plan for each Part 90 miner must be provided to the affected miner so that any deviations from the operator's plan will be apparent to the affected miner. To prevent unwarranted disclosure of a Part 90 miner's identity, no operator may post the plan on the mine bulletin board.

It is appropriate to respond to comments which opposed the proposal for respirable dust control plans required under Part 71. Several commenters expressed concern that enforcement action could be taken for failure to maintain compliance with an approved dust control plan, even if there was compliance with the respirable dust standard at the time of inspection. Other commenters approved this result.

The purpose of the respirable dust control plan is to assure continuing compliance with the applicable respirable dust standard. Once a violation of the standard is demonstrated by sampling results, appropriate dust control measures are clearly necessary to prevent further health impairment to a miner who has evidence of the development of pneumoconiosis. Where dust controls have been shown to be necessary, MSHA believes the control measures adopted by the operator should be consistently maintained and implemented in accordance with the approved plan. In this way, the health of the Part 90 miner is protected during each shift, not just during shifts when sampling is conducted to determine whether there is compliance with the respirable dust standard. Therefore, under Part 90, operators are required to maintain compliance with their respirable dust control plans.

Drafting Information

The principal persons responsible for preparing this rule are: William A. Holgate and William H. Sutherland, Division of Health, Mine Safety and Health Administration; Susan C. Olinger and Edward P. Clair, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

Regulatory Analysis

It has been determined that a regulatory analysis is not required for this final rule under the Department of Labor's final guidelines for implementing Executive Order 12044 (44 FR 5570, January 26, 1979). It is estimated that the annual cost of this final rule will not exceed 1 million dollars.

Impact Statement

The Department of Labor has determined in accordance with the National Environmental Policy Act of 1969, as amended, and the Department's regulations implementing that statute, that this final rule is not a major Federal action affecting the quality of the human environment that requires an Environmental Impact Statement.

Dated: December 2, 1980.

Robert B. Lagather,

Assistant Secretary of Mine Safety and Health.

1. Part 90 of Subchapter O, Chapter I, Title 30, Code of Federal Regulations is revised to read as set forth below:

PART 90—MANDATORY HEALTH STANDARDS—COAL MINERS WHO HAVE EVIDENCE OF THE DEVELOPMENT OF PNEUMOCONIOSIS

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Sec.

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Authority: Sections 101 and 103(h) of the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164, 91 Stat. 1291 and 1299 (30 U.S.C. 811 and 813(h)).

Subpart A—General

§ 90.1 Scope.

This Part 90 establishes the option of miners who are employed at underground coal mines or at surface work areas of underground coal mines and who have evidence of the development of pneumoconiosis to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below 1.0 milligrams per cubic meter of air. The rule sets forth procedures for miners to exercise this option, and establishes the right of miners to retain their regular rate of pay and receive wage increases. The rule also sets forth the operator's obligations, including respirable dust sampling for Part 90 miners. This Part 90 is promulgated pursuant to section 101 of the Act and supercedes section 203(b) of the Act.

§ 90.2 Definitions.

For the purpose of this Part 90, the term:

"Act" means the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164.

"Active workings" means any place at a coal mine where miners are normally required to work or travel.

"Certified person" means an individual certified by the Secretary in accordance with § 90.202 (Certified person; sampling) to take respirable dust samples required by this part or certified in accordance with § 90.203 (Certified person; maintenance and calibration) to

perform the maintenance and calibration of respirable dust sampling equipment as required by this part.

"Concentration" means a measure of the amount of a substance contained per unit volume of air.

"District Manager" means the manager of the Coal Mine Safety and Health District in which the mine is located.

"Mechanized mining unit" means: (1) a unit of mining equipment including hand loading equipment used for the production of material; or (2) a specialized unit which utilizes mining equipment other than specified in § 70.207(e) (Bimonthly sampling; mechanized mining unit).

"MRE instrument" means the gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

"MSHA" means the Mine Safety and Health Administration of the Department of Labor.

"Normal work duties" means duties which the Part 90 miner performs on a routine day-to-day basis in his or her job classification at a mine.

"Part 90 miner" means a miner employed at an underground coal mine or at a surface work area of an underground coal mine who has exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or under § 90.3 (Part 90 option; notice of eligibility; exercise of option) of this part to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below 1.0 milligrams per cubic meter of air, and who has not waived these rights.

"Quartz" means crystalline silicon dioxide (SiO_2) not chemically combined with other substances and having a distinctive physical structure.

"Respirable dust" means dust collected with a sampling device approved by the Secretary and the Secretary of Health and Human Services in accordance with Part 74 (Coal Mine Dust Personal Sampler Units) of this title. Sampling device approvals issued by the Secretary of the Interior and Secretary of Health, Education, and Welfare are continued in effect.

"Secretary" means the Secretary of Labor or a delegate.

"Secretary of Health and Human Services" means Secretary of Health and Human Services or Secretary of Health, Education, and Welfare.

"Surface work area of an underground coal mine" means the surface areas of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting bituminous coal, lignite, or anthracite from its natural deposits underground by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

"Transfer" means any change in the work assignment of a Part 90 miner by the operator and includes (1) any change in occupation code of a Part 90 miner; (2) any movement of a Part 90 miner to or from a mechanized mining unit; or (3) any assignment of a Part 90 miner to the same occupation in a different location at a mine.

"Underground coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted.

"Valid respirable dust sample" means a respirable dust sample collected and submitted as required by this part, and not voided by MSHA.

§ 90.3 Part 90 option; notice of eligibility; exercise of option.

(a) Any miner employed at an underground coal mine or at a surface work area of an underground coal mine who, in the judgment of the Secretary of Health and Human Services, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of Health and Human Services, or based on other medical examinations shall be afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed during each shift is continuously maintained at or below 1.0 milligrams per cubic meter of air. Each of these miners shall be notified in writing of eligibility to exercise the option.

(b) Any miner who is a section 203(b) miner on January 31, 1981, shall be a Part 90 miner on February 1, 1981, entitled to full rights under this part to retention of pay rate, future actual wage increases, and future work assignment, shift and respirable dust protection.

(c) Any Part 90 miner who is transferred to a position at the same or another coal mine shall remain a Part 90 miner entitled to full rights under this part at the new work assignment.

(d) The option to work in a low dust area of the mine may be exercised for the first time by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who was eligible for the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or is eligible for the option under this part by signing and dating the Exercise of Option Form and mailing the form to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(e) The option to work in a low dust area of the mine may be reexercised by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or exercised the option under this part by sending a written request to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203. The request should include the name and address of the mine and operator where the miner is employed.

(f) No operator shall require from a miner a copy of the medical information received from the Secretary or Secretary of Health and Human Services.

Subpart B—Dust Standards, Rights of Part 90 Miners

§ 90.100 Respirable dust standard.

After the twentieth calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which the Part 90 miner in the active workings of the mine is exposed at or below 1.0 milligrams per cubic meter of air. Concentrations shall be measured with an approved sampling device and expressed in terms of an equivalent concentration determined in accordance with § 90.206 (Approved sampling devices; equivalent concentrations).

§ 90.101 Respirable dust standard when quartz is present.

When the respirable dust in the mine atmosphere of the active workings to which a Part 90 miner is exposed contains more than 5 percent quartz, the

operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which a Part 90 miner is exposed at or below a concentration of respirable dust computed by dividing the percent of quartz into the number 10. The application of the formula shall not result in a respirable dust standard in excess of 1.0 milligrams per cubic meter of air. Concentrations shall be expressed in milligrams per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 90.206 (Approved sampling devices; equivalent concentrations).

Example: The respirable dust associated with a Part 90 miner contains quartz in the amount of 20%. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that Part 90 miner shall be continuously maintained at or below 0.5 milligrams of respirable dust per cubic meter of air ($10/20=0.5$ mg/m^3).

§ 90.102 Transfer; notice.

(a) Whenever a Part 90 miner is transferred in order to meet the respirable dust standard in § 90.100 (Respirable dust standard) or § 90.101 (Respirable dust standard when quartz is present), the operator shall transfer the miner to an existing position at the same coal mine on the same shift or shift rotation on which the miner was employed immediately before the transfer. The operator may transfer a Part 90 miner to a different coal mine, a newly-created position or a position on a different shift or shift rotation if the miner agrees in writing to the transfer.

(b) On or before the twentieth calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator shall give the District Manager written notice of the occupation and, if applicable, the mechanized mining unit to which the Part 90 miner will be assigned on the twenty-first calendar day following receipt of the notification from MSHA.

(c) After the twentieth calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator shall give the District Manager written notice before any transfer of a Part 90 miner. This notice shall include the scheduled date of the transfer.

§ 90.103 Compensation.

(a) The operator shall compensate each Part 90 miner at not less than the regular rate of pay received by that miner immediately before exercising the option under § 90.3 (Part 90 option; notice of eligibility; exercise of option).

(b) Whenever a Part 90 miner is transferred, the operator shall compensate the miner at not less than the regular rate of pay received by that miner immediately before the transfer.

(c) The operator shall compensate each miner who is a section 203(b) miner on January 31, 1981, at not less than the regular rate of pay that the miner is required to receive under section 203(b) of the Act immediately before the effective date of this part.

(d) In addition to the compensation required to be paid under paragraphs (a), (b) and (c) of this section, the operator shall pay each Part 90 miner the actual wage increases that accrue to the classification to which the miner is assigned.

(e) If a miner is temporarily employed in an occupation other than his or her regular work classification for two months or more before exercising the option under § 90.3 (Part 90 option; notice of eligibility; exercise of option), the miner's regular rate of pay for purposes of paragraph (a) and (b) of this section is the higher of the temporary or regular rates of pay. If the temporary assignment is for less than two months, the operator may pay the Part 90 miner at his or her regular work classification rate regardless of the temporary wage rate.

(f) If a Part 90 miner is transferred, and the Secretary subsequently notifies the miner that notice of the miner's eligibility to exercise the Part 90 option was incorrect, the operator shall retain the affected miner in the current position to which the miner is assigned and continue to pay the affected miner the applicable rate of pay provided in paragraphs (a), (b), (c) and (d) of this section, until:

(1) The affected miner and operator agree in writing to a position with pay at not less than the regular rate of pay for that occupation; or

(2) A position is available at the same coal mine in both the same occupation and on the same shift on which the miner was employed immediately before exercising the option under § 90.3 (Part 90 option; notice of eligibility; exercise of option) or under the old section 203(b) program (36 FR 20601, October 27, 1971).

(i) When such a position is available, the operator shall offer the available position in writing to the affected miner with pay at not less than the regular rate of pay for that occupation.

(ii) If the affected miner accepts the available position in writing, the operator shall implement the miner's reassignment upon notice of the miner's acceptance. If the miner does not accept the available position in writing, the miner may be reassigned and protections under Part 90 shall not apply. Failure by the miner to act on the written offer of the available position within 15 days after notice of the offer is received from the operator shall operate as an election not to accept the available position.

§ 90.104 Waiver of rights; re-exercise of option.

(a) A Part 90 miner may waive his or her rights and be removed from MSHA's active list of miners who have rights under Part 90 by:

(1) Giving written notification to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, that the miner waives all rights under this part;

(2) Applying for and accepting a position in an area of a mine which the miner knows has an average respirable dust concentration exceeding 1.0 milligrams per cubic meter of air or the respirable dust standard established by § 90.101 (Respirable dust standard when quartz is present); or

(3) Refusing to accept another position offered by the operator at the same coal mine that meets the requirements of § 90.100, § 90.101 and § 90.102(a) after dust sampling shows that the average respirable dust concentration in his or her present position exceeds 1.0 milligrams per cubic meter of air or the respirable dust standard established by § 90.101 (Respirable dust standard when quartz is present).

(b) If rights under Part 90 are waived, the miner gives up all rights under Part 90 until the miner re-exercises the option in accordance with § 90.3(e) (Part 90 option; notice of eligibility; exercise of option).

(c) If rights under Part 90 are waived, the miner may re-exercise the option under this part in accordance with § 90.3(e) (Part 90 option; notice of eligibility; exercise of option) at any time.

Subpart C—Sampling Procedures

§ 90.201 Sampling; general requirements.

(a) Each operator shall take respirable dust samples of the concentration of respirable dust in the active workings of the mine as required by this part with a sampling device approved by the Secretary and the Secretary of Health and Human Services under part 74 (Coal Mine Dust Personal Sampler Units) of this title.

(b) Sampling devices shall be worn or carried directly to and from each Part 90 miner's position, and shall remain operational during the entire shift or for 8 hours, whichever time is less.

(c) Upon request from the District Manager, the operator shall submit the date on which collecting any respirable dust samples required by this part will begin.

(d) During the time for abatement fixed in a citation for violation of § 90.100 (Respirable dust standard) or § 90.101 (Respirable dust standard when quartz is present), the operator shall take corrective action and then sample the affected Part 90 miner until five valid respirable dust samples are taken.

(e) The respirable dust samples required by this part shall be collected while the Part 90 miner is performing normal work duties.

(f) Unless otherwise directed by the District Manager, the respirable dust samples required under this part shall be taken by placing the sampling device as follows:

(1) On the Part 90 miner;

(2) On the piece of equipment which the Part 90 miner operates within 36 inches of the normal working position; or

(3) At a location that represents the maximum concentration of dust to which the Part 90 miner is exposed.

§ 90.202 Certified person; sampling.

(a) The respirable dust sampling required by this part shall be done by a certified person.

(b) To be certified, a person shall pass the MSHA examination on sampling of respirable coal mine dust.

(c) A person may be temporarily certified by MSHA to take respirable dust samples if the person receives instruction from an authorized representative of the Secretary in the methods of collecting and submitting samples under this rule. The temporary certification shall be withdrawn if the person does not successfully complete the examination conducted by MSHA on sampling of respirable coal mine dust within six months from the issue date of the temporary certification.

§ 90.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.

(b) To be certified, a person shall pass the MSHA examination on maintenance and calibration procedures for respirable dust sampling equipment.

(c) A person may be temporarily certified by MSHA to maintain and calibrate approved sampling devices if the person receives instruction from an authorized representative of the Secretary in the maintenance and calibration procedures for respirable dust sampling equipment under this rule. The temporary certification shall be withdrawn if the person does not successfully complete the examination conducted by MSHA on maintenance and calibration procedures within six months from the issue date of the temporary certification.

§ 90.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under Part 74 (Coal Mine Dust Personal Sampler Units) of this title and calibrated in accordance with MSHA Informational Report No. 1121, "Standard Calibration and Maintenance Procedures for Wet Test Meters and Coal Mine Respirable Dust Samplers (Supersedes IR 1073)," by a person certified in accordance with § 90.203 (Certified person; maintenance and calibration).

(b) Approved sampling devices shall be calibrated at the flowrate of 2.0 liters of air per minute, or at a different flowrate as prescribed by the Secretary and the Secretary of Health and Human Services for a particular device, before they are put into service and at intervals not to exceed 200 hours of operating time thereafter.

(c) A calibration mark shall be placed on the flowmeter of each approved sampling device to indicate the proper position of the float when the sampler is operating at a flowrate of 2.0 liters of air per minute or other flowrate prescribed by the Secretary and the Secretary of Health and Human Services for the particular device. The standard to denote proper flow is when the lowest part of the float is tangent to the top of the calibration mark.

(d) Approved sampling devices shall be tested and examined immediately before each sampling shift and necessary external maintenance shall be performed to assure that the sampling devices are clean and in proper working condition by a person certified in accordance with § 90.202 (Certified person; sampling) or § 90.203 (Certified person; maintenance and calibration). This testing and examination shall include the following:

(1) Testing the voltage of each battery while under actual load to assure the battery is fully charged. The voltage for nickel cadmium cell batteries shall not be lower than the product of the number of cells in the battery pack multiplied by 1.25. The voltage for other than nickel cadmium cell batteries shall not be lower than the product of the number of cells in the battery pack multiplied by the manufacturer's nominal voltage per cell value;

(2) Examination of all components of the cyclone to assure that they are clean and free of dust and dirt;

(3) Examination of the inner surface of the cyclone on the approved sampling device to assure that it is free of scoring;

(4) Examination of the external tubing on the approved sampling device to assure that it is clean and free of leaks; and

(5) Examination of the clamping and positioning of the cyclone body, vortex finder and cassette to assure that they are rigid, in alignment, and firmly in contact.

(e) In accordance with 5 U.S.C. 552(a) MSHA Informational Report No. 1121 referenced in paragraph (a) of this section is hereby incorporated by reference and made a part of this section as if it were set forth in full. The incorporated publication is available without charge at each Coal Mine Safety and Health District and Subdistrict office of MSHA and is on file at the Office of the Federal Register Information Center. Any future amendments to MSHA Informational Report No. 1121 will be announced in the **Federal Register.** This incorporation by reference was approved March 25, 1980 by the Director of the Office of the Federal Register.

§ 90.205 Approved sampling devices; operation; air flowrate.

(a) Sampling devices approved in accordance with Part 74 (Coal Mine Dust Personal Sampler Units) of this title shall be operated at the flowrate of 2.0 liters of air per minute, or at a different flowrate as prescribed by the Secretary and the Secretary of Health and Human Services for the particular device.

(b) Except as provided in paragraph (d) of this section, each approved sampling device shall be examined each shift by a person certified in accordance with § 90.202 (Certified person; sampling) during the second hour after being put into operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments shall be made by the certified person.

(c) Each sampling device shall be examined each shift by a person certified in accordance with § 90.202 (Certified person; sampling) during the last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the dust data card stating that the proper flowrate was not maintained.

(d) Paragraph (b) of this section shall not apply if the approved sampling device is being operated in a breast or chamber of an anthracite coal mine where the full box mining method is used.

§ 90.206 Approved sampling devices; equivalent concentrations.

The concentration of respirable dust shall be determined by dividing the weight of dust in milligrams collected on the filter of an approved sampling device by the volume of air in cubic meters passing through the filter and then converting that concentration to an equivalent concentration as measured with an MRE instrument. To convert a concentration of respirable dust as measured with an approved sampling device to an equivalent concentration of respirable dust as measured with an MRE instrument, the concentration of respirable dust measured with the approved sampling device shall be multiplied by a constant factor prescribed by the Secretary for the approved sampling device used, and the product shall be the equivalent concentration as measured with an MRE instrument.

§ 90.207 Compliance sampling.

(a) The operator shall take five valid respirable dust samples for each Part 90 miner within 15 calendar days after:

(1) The 20-day period specified for each Part 90 miner in § 90.100 (Respirable dust standard);

(2) Receipt of notification from MSHA that any respirable dust sample taken in accordance with § 90.208 (Bimonthly sampling) exceeds 1.0 milligram per cubic meter of air or the respirable dust standard established by § 90.101 (Respirable dust standard when quartz is present); and

(3) Implementing any transfer after the twentieth calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine.

§ 90.208 Bimonthly sampling.

(a) Each operator shall take one valid respirable dust sample for each Part 90 miner during each bimonthly period beginning with the bimonthly period of February 1, 1981. The bimonthly periods are:

February 1–March 31
April 1–May 31
June 1–July 31
August 1–September 30
October 1–November 30
December 1–January 31

(b) When the respirable dust standard is changed in accordance with § 90.101 (Respirable dust standard when quartz is present), respirable dust sampling of Part 90 miners shall begin on the first shift on which the miner is performing normal work duties during the next bimonthly period following notification of such change from MSHA.

(c) Upon issuance of a citation for a violation of § 90.100 (Respirable dust standard) or § 90.101 (Respirable dust standard when quartz is present), paragraphs (a) and (b) of this section shall not apply to that Part 90 miner until the violation is abated in accordance with § 90.201(d) (Sampling; general requirements).

§ 90.209 Respirable dust samples; transmission by operator.

(a) The operator shall transmit within 24 hours after the end of the sampling shift all samples collected to fulfill the requirements of this part in containers provided by the manufacturer of the filter cassette to: Respirable Dust Processing Laboratory, Pittsburgh Technical Support Center, 4800–D Forbes Avenue, Pittsburgh, Pennsylvania 15213, or to any other address designated by the District Manager.

(b) The operator shall not open or tamper with the seal of any filter cassette or alter the weight of any filter cassette before or after it is used to fulfill the requirements of this part.

(c) A person certified in accordance with § 90.202 (Certified person; sampling) shall properly complete the dust data card that is provided by the manufacturer for each filter cassette. The card shall have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card shall be signed by the certified person and shall include that person's certification number. Respirable dust samples with data cards not properly completed will be voided by MSHA.

(d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of Parts 70, 71 or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by Parts 70, 71 or 90 of this title.

(e) Respirable dust samples received by MSHA in excess of those required by this part shall be considered invalid samples.

§ 90.210 Respirable dust samples; report to operator.

(a) The Secretary shall provide the operator with a report of the following data on respirable dust samples as soon as practicable:

(1) The mine identification number;

(2) The mechanized mining unit, if any, within the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed in milligrams per cubic meter of air, for each valid sample;

(4) The average concentration of respirable dust, expressed in milligrams per cubic meter of air, for all valid samples;

(5) The occupation code;

(6) The reason for voiding any samples; and,

(7) The Social Security Number of the Part 90 miner.

(b) Upon receipt, the operator shall provide a copy of this report to the Part 90 miner. The operator shall not post the original or a copy of this report on the mine bulletin board.

§ 90.220 Status change reports.

If there is a change in the status of a Part 90 miner that affects the respirable dust sampling requirements of this part (such as entering a terminated, injured or ill status, or returning to work), the operator shall report the change in the status of the Part 90 miner to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing within 3 working days after the status change has occurred.

Subpart D—Respirable Dust Control Plans

§ 90.300 Respirable dust control plan; filing requirements.

(a) If an operator abates a violation of § 90.100 (Respirable dust standard) or § 90.101 (Respirable dust standard when quartz is present) by reducing the respirable dust level in the position of the Part 90 miner, the operator shall submit a written respirable dust control plan for that Part 90 miner in that position within 15 calendar days after the citation is terminated to the District Manager for approval. The respirable dust control plan and revisions thereof shall be suitable to the conditions and the mining system of the coal mine and shall be adequate to continuously maintain respirable dust within the permissible concentration for the Part 90 miner in the position identified in the citation.

(b) Each respirable dust control plan shall include at least the following:

(1) The mine identification number assigned by MSHA, the operator's name, mine name, mine address, and mine telephone number and the name,

address and telephone number of the principal officer in charge of health and safety at the mine;

(2) The name and Social Security number of the Part 90 miner and the position at the mine to which the plan applies;

(3) A detailed description of the specific respirable dust control measures used to abate the violation of the respirable dust standard; and

(4) A detailed description of how each of the respirable dust control measures described in response to paragraph (b)(3) of this section will continue to be used by the operator, including at least the specific time, place and manner the control measures will be used.

§ 90.301 Respirable dust control plan; approval by district manager; copy to Part 90 miner.

(a) The District Manager will approve respirable dust control plans on a mine-by-mine basis. When approving respirable dust control plans, the District Manager shall consider whether:

(1) The respirable dust control measures would be likely to maintain compliance with the respirable dust standard; and

(2) The operator's compliance with all provisions of the respirable dust control plan could be objectively ascertained by MSHA.

(b) MSHA may take respirable dust samples to determine whether the respirable dust control measures in the operator's plan effectively maintain compliance with the respirable dust standard.

(c) The operator shall comply with all provisions of each respirable dust control plan upon notice from MSHA that the respirable dust control plan is approved.

(d) The operator shall provide a copy of the current respirable dust control plan required under this part to the Part 90 miner. The operator shall not post the original or a copy of the plan on the mine bulletin board.

(e) The operator may review respirable dust control plans and submit proposed revisions to such plans to the District Manager for approval.

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Friday
December 5, 1980

Part VI

Department of Agriculture

Federal Grain Inspection Service

Official Agency Geographic Area; Request for Comments on Applicants for Designations in the Toledo, Ohio, Nonexport Area

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service Official Agency Geographic Area

Request for Comments on Applicants for Designation in the Toledo, Ohio, Nonexport Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as an official agency in the Toledo, Ohio, nonexport area.

DATE: Comments to be postmarked on or before January 5, 1981.

ADDRESS: Comments should be submitted to USDA, FGIS, Issuance and Coordination Staff, Room 1127, Auditor's Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, (202) 447–8262.

SUPPLEMENTARY INFORMATION: The April 30, 1980, issue of the **Federal Register** (45 FR 28981) contained a notice from the Federal Grain Inspection Service (FGIS) requesting applications for designation to provide official services under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the area formerly serviced by the Toledo Board of Trade, Toledo, Ohio, excluding export port locations. The export port locations will continue to be provided service by the FGIS Field Office in Toledo, Ohio, and currently include the following facilities: The Andersons, Toledo, Ohio, and Maumee, Ohio; Cargill, Inc. (East and West Side Elevators), Toledo, Ohio, and Cargill, Inc., Maumee, Ohio; and Mid-States Terminals, Inc., Toledo, Ohio. Applications were to be postmarked by June 30, 1980. A total of three qualified applications were received.

The names of the applicants for designation are as follows: D. L. Boltenhouse Grain Inspection, P.O. Box 96, Bellevue, Ohio 44811; Fostoria Grain Inspection, 506 Lockwood Avenue, P.O. Box 864, Fostoria, Ohio 44830; and Northern Ohio Grain Inspection, R.R. #1, Lone Oak Drive, Farmland, Indiana 47340.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants. All comments must be submitted to the Issuance and Coordination Staff, specified in the address section of this notice and be postmarked not later than January 5, 1981.

A comment period of 30 days is deemed adequate. This action does not impose any undue obligations on others and, under the circumstances, provides a sufficient period of time for comments and would expedite the designation of an official agency to provide official services in the nonexport area formerly serviced by the Toledo Board of Trade.

Consideration will be given to all comments filed and to all other information available to the Administrator of the FGIS before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register** and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870 (7 U.S.C. 79))

Done in Washington, D.C. on: December 1, 1980.

J. T. Abshier,

Director Compliance Division.

[FR Doc. 80–37840 Filed 12–4–80; 8:45 am]

BILLING CODE 3410-EN-M

federal register

Friday
November 5, 1980

Part VII

Office of Management and Budget

Budget Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report four new deferals of budget authority totalling $2,770.8 million and three revisions to previously transmitted deferrals increasing the amount deferred by $846.2 million.

The new deferrals involve programs related to International Security Assistance, Department of Defense military construction programs, and the Tennessee Valley Authority.

The revisions to existing deferrals involve programs in the Departments of Defense, Transportation, and the Treasury.

The details of the deferrals are contained in the attached reports.

Jimmy Carter

THE WHITE HOUSE,
December 2, 1980.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral #	Item	Budget Authority
	Funds Appropriated to the President:	
	International Security Assistance	
D81-23	Foreign military credit sales	659,250
D81-24	Economic support fund	1,984,500
	Department of Defense-Military	
	Military Construction	
D81-25	Military construction (medical facilities)	111,300
D81-7A	Military construction, all services	607,327
	Department of Transportation:	
	Federal Aviation Administration	
	Facilities and equipment (Airport and	
D81-17A	airway trust fund)	374,426
	Department of the Treasury:	
	Office of Revenue Sharing	
	State and local government fiscal as-	
D81-19A	sistance trust fund	10,964 *
	Other Independent Agencies:	
	Tennessee Valley Authority	
D81-26	Tennessee Valley Authority Fund	15,800
	Total, deferrals	3,763,567

* Outlays only.

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SUMMARY OF SPECIAL MESSAGES
FOR FY 1981
(in thousands of dollars)

	Rescissions	Deferrals
Second special message:		
New items	---	2,770,850
Change to amounts previously submitted	---	846,156
Effect of second special message	---	3,617,006
Previous special messages	---	619,128
Total amount proposed in special messages	---	4,236,134 a

a. This amount represents budget authority except for $10,694 thousand involving the deferral of outlays only (D81-19A).

Deferral No: D81-23

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Funds Appropriated to the President	New budget authority (P.L. 96-369): $659,250,000
Bureau: International Security Assistance	Other budgetary resources: -
Appropriation title & symbol: Foreign Military Credit Sales, 1981 1111082	Total budgetary resources: $659,250,000
	Amount to be deferred: Part of year: $659,250,000
	Entire year:
OMB identification code: 11-1082-0-1-152	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION

Pursuant to the Arms Export Control Act, the President is authorized to sell or finance by credit or guaranties defense articles and defense services for friendly countries to facilitate the common defense. H.J. Res. 610 (Public Law 96-369) makes continuing appropriations of $659,250,000 for fiscal year 1981 to enable the President to carry out those authorities. Under section 2 of the Arms Export Control Act, the Secretary of State, under the direction of the President, is responsible for continuous supervision and general direction of sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order 11958 of January 18, 1977, delegated certain of the President's functions under the Arms Export Control Act to the Secretaries of State and Defense. Executive Order 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit and guaranty transactions that are based upon national security and financial policies.

These funds have been deferred pending approval of specific loans to eligible countries by the Departments of State, Defense and the Treasury. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds.

ESTIMATED EFFECT -- This deferral will have no programmatic or budgetary impact and is not restrictive in nature.

OUTLAY EFFECT -- There is no outlay effect of this deferral because funds will be released as loans are approved.

Deferral No: D81-24

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Funds Appropriated to the President (IDCA)	New budget authority (P.L. 96-369): $1,984,500,000
Bureau: International Security Assistance	Other budgetary resources: 80,000,000
Appropriation title & symbol: Economic Support Fund, 1981 1/ 1111037	Total budgetary resources: 2,064,500,000
	Amount to be deferred: Part of year: $1,984,500,000
	Entire year:
OMB identification code: 11-1037-0-1-151	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☒ Yes (Grants and Loans) ☐ No	☐ Other
Type of account or fund: ☒ Annual	Type of budget authority: ☒ Appropriation
☐ Multiple-year (expiration date)	☐ Contract authority
☐ No-year	☐ Other

Justification: Pursuant to the Foreign Assistance Act of 1961, as amended, the President is authorized to furnish assistance to promote economic or political stability in foreign countries on such terms and conditions as he may determine. H.J. Res 610 (Public Law 96-369) makes continuing appropriations of $1,984,500,000 for fiscal year 1981 to enable the President to carry out those authorities. Also, P.L. 96-304 makes available $80,000,000 for use in Central America. Under Part II, Chapter 4, of the Foreign Assistance Act, the Secretary of State is responsible for policy decisions and justifications for such economic support programs, including the countries and amounts to be provided. Executive Order 12163 of September 29, 1979, further delegates the President's responsibilities under Chapter 4 to the Secretary of State insofar as they relate to policy decisions and justifications for economic support programs. These functions will be exercised in cooperation with the Director of the International Development Cooperation Agency (IDCA).

The funds are deferred pending approval of specific loans and grants to eligible countries by the Secretary of State. This will insure that each approved program is consistent with the foreign, national security and financial policies of the U.S. and will not exceed the limits of available funds. The $80,000,000 in funds provided for Central America have already been justified and released for use.

Estimated Effect: This deferral will have no programmatic or budgetary impact and is not restrictive in nature.

Outlay Effect: There is no outlay effect of this deferral because funds will be released as loans and grants are approved.

1/ This account was the subject of a deferral in FY 1980 (D80-1).

Deferral No: D81-25

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Defense - Military	New budget authority (P.L. 96-436): $1,633,107,000
Bureau: Military Construction	Other budgetary resources:
Appropriation title & symbol: See coverage section below	Total budgetary resources: 1,633,107,000
	Amount to be deferred: Part of year: $111,300,000
	Entire year:
OMB identification code: See coverage section below	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual	Type of budget authority: ☒ Appropriation
☒ Multiple-year September 30, 1985 (expiration date)	☐ Contract authority
☐ No-year	☐ Other

Coverage 1/

Appropriation	Symbol	OMB Identification Code	Amount Deferred
Military construction, Army	211/52050	21-2050-0-1-051	$ 91,300,000
Military construction, Navy	171/51205	17-1205-0-1-051	$ 20,000,000
Total			$111,300,000

Justification: These funds were appropriated in P.L. 96-436 for military construction projects in the Departments of the Army and Navy. Funds totaling $111.3 million for construction and rehabilitation of medical facilities are being deferred pending the issuance of budget guidance to departments and agencies on the use of federal funds for construction/rehabilitation of medical facilities in the health services regions where the supply of hospital beds exceeds demand. The funds are deferred until this guidance has been issued and the necessary facility studies are completed.

Estimated Effect: It is estimated that this deferral action will have minimal programmatic or budgetary effects. Slight delays to the initial construction program that may occur pending the issuance of the guidance are not expected to materially affect overall construction schedules.

Outlay Effect: This deferral action has no estimated effect on outlays.

1/ These accounts are the subject of another deferral in FY 1981 (D81-7A).

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D81-7 transmitted to the Congress on October 1, 1980, and printed as House Document No. 96-373.

This revision to a deferral of Department of Defense military construction funds increases the amount originally reported as deferred from $6,983,414 to $607,327,000. This increase of $600,343,586 results primarily from an increase in budgetary resources made available by the Military Construction Appropriation Act, 1981 (Public Law 96-436).

Deferral No: D81-7A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Defense - Military	New budget authority (P.L. 96-436): $3,216,843,000
Bureau:	Other budgetary resources: 1,703,635,000
Appropriation title & symbol: See coverage section below	Total budgetary resources: 4,920,478,000
	Amount to be deferred: Part of year: $ 607,327,000
	Entire year:
OMB identification code: See coverage section below	Legal authority (in addition to sec 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [ ] Annual, September 30, 1983; [X] Multiple-year, September 30, 1984, September 30, 1985 * (expiration date); [X] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other

Coverage[1] *

Appropriation	Symbol	OMB Identification Code	Amount Deferred
Military construction, Army	211/52050	21-2050-0-1-051	$ 68,740,000
Military construction, Army	210/42050	21-2050-0-1-051	0
Military construction, Army	219/32050	21-2050-0-1-051	0
Military construction, Navy	171/51205	17-1205-0-1-051	$ 65,685,000
Military construction, Navy	170/41205	17-1205-0-1-051	0
Military construction, Navy	179/31205	17-1205-0-1-051	0
Military construction, Air Force	571/53300	57-3300-0-1-051	$145,875,000
Military construction, Air Force	570/43300	57-3300-0-1-051	0
Military construction, Air Force	579/33300	57-3300-0-1-051	0
Military construction, Defense Agencies	971/50500	97-0500-0-1-051	$150,630,000
Military construction, Defense Agencies	970/40500	97-0500-0-1-051	4,200,000
Military construction, Defense Agencies	979/30500	97-0500-0-1-051	1,218,000
North Atlantic Treaty Organization Infrastructure	97x0804	97-0804-0-1-051	$100,000,000
Military construction, Army National Guard	211/52085	21-2085-0-1-051	$ 20,115,000
Military construction, Army National Guard	210/42085	21-2085-0-1-051	0
Military construction, Army National Guard	219/32085	21-2085-0-1-051	0

1/ These accounts were the subject of a similar deferral during fiscal year 1980 (D80-98).

* Revised from previous report.

Military construction, Air National Guard	571/53830	57-3830-0-1-051	$ 27,060,000
Military construction, Air National Guard	570/43830	57-3830-0-1-051	0
Military construction, Air National Guard	579/33830	57-3830-0-1-051	0
Military construction, Army Reserve	211/52086	21-2086-0-1-051	$ 3,944,000
Military construction, Army Reserve	210/42086	21-2086-0-1-051	0
Military construction, Army Reserve	219/32086	21-2086-0-1-051	0
Military construction, Naval Reserve	171/51235	17-1235-0-1-051	$ 12,250,000
Military construction, Naval Reserve	170/41235	17-1235-0-1-051	0
Military construction, Naval Reserve	179/31235	17-1235-0-1-051	0
Military construction, Air Force Reserve	571/53730	57-3730-0-1-051	$ 7,610,000
Military construction, Air Force Reserve	570/43730	57-3730-0-1-051	0
Military construction, Air Force Reserve	579/33730	57-3730-0-1-051	0
Military construction, Reserve Components Generally	9710805	97-0805-0-1-051	0
Total			$607,327,000

Justification:* The above amounts in the listed five-year appropriations are currently deferred under provisions of the Antideficiency Act (31 U.S.C. 665) which authorize the establishment of reserves for contingencies.

These funds are deferred for administrative reasons, such as incomplete project designs and incomplete coordination of projects with either other Federal agencies or local government agencies. In some cases, specific uses for these funds have not yet been identified. Funds will be apportioned for individual projects throughout the year upon identification of specific requirements and upon completion of project design and/or coordination.

Estimated Effect: This deferral action has no programmatic or budgetary effect because the funds would not be obligated if they were made available.

Outlay Effect: This deferral action has no effect on outlays.

* Revised from previous report.

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This revision of a deferral for facilities and equipment (Airport and Airway Trust Fund) in the Federal Aviation Administration increases the amount previously reported as deferred from $133,822,699 to $374,426,000. This increase of $240,603,301 results from additional budgetary resources made available to this account by the enactment of the Department of Transportation and Related Agencies Appropriation Act, 1981 (P.L. 96-400).

Deferral No: D81-17A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation	New budget authority (P.L. 96-400): $350,000,000*
Bureau: Federal Aviation Administration	Other budgetary resources: 387,426,000*
Appropriation title & symbol: Facilities and Equipment (Airport and Airway Trust Fund), FAA 1/ 69X8107 690/48107 698/28107 691/58107* 699/38107	Total budgetary resources: 737,426,000* Amount to be deferred: Part of year: $ -0- Entire year: 374,426,000*
OMB identification code: 69-8107-0-7-402	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [X] Multiple-year 698/28107 September 30, 1982; 699/38107 September 30, 1983; 690/48107 September 30, 1984 (expiration date) [X] No-year 691/58107 September 30, 1985*	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification:* Funds from this account are used to procure specific congressionally approved facilities and equipment for the expansion and modernization of the national airway system. Projects financed from this account include construction of buildings and purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system and expansion and improvement in the navigational and landing aid systems. These funds were appropriated in the Department of Transportation and Related Agencies Appropriation Act of 1981 and prior years. The estimated total cost for each project is included in the budget submission and appropriation for the year in which it is requested. Because of the lengthy procurement and construction time for interrelated new facilities and complex equipment systems, it is not possible to obligate all funds necessary to complete each project in the year funds are appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This deferral action is consistent with congressional intent to provide multi-year funding for the total costs of these projects and is taken under provisions of the Antideficiency Act (31 U.S.C. 665) which authorizes the establishment of reserves for contingencies.

Estimated Effect: This deferral action is consistent with the normal operation of this program. The amount deferred could not be economically used if made available in FY 1981 because of the planned multi-year procurement, construction, and installation cycle.

Outlay Effect: This deferral action has no effect on outlays.

1/ This account was the subject of a similar deferral in FY 1980 (D80-20A).
* Revised from previous report.

D81-19A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D81-19, transmitted to the Congress on October 1, 1980 and printed as House Document 96-373.

This revision of the deferral for the State and Local Government Fiscal Assistance Trust Fund in the Office of Revenue Sharing increases the previously reported deferral from $5,485,075 to $10,694,198. This increase of $5,209,123 results from withholding payments from various governments for reasons of noncompliance with the requirements of the State and Local Fiscal Assistance Act, as amended.

Deferral No: D81-19A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Treasury	New budget authority (P.L. ____): $ ____
Bureau: Office of Revenue Sharing	Other budgetary resources: 79,543,660*
Appropriation title & symbol: State and Local Government Fiscal Assistance Trust Fund 20X8111 1/ 2/	Total budgetary resources: 79,543,660*
	Amount to be deferred: Part of year: $ 10,694,198*
	Entire year: ____
OMB identification code: 20-8111-0-7-851	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[X] Other P.L. 92-512, Sections 121 &123; P.L. 94-488
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: The State and Local Government Fiscal Assistance Trust Fund is the vehicle for disbursement of general revenue sharing funds. This deferral represents payments withheld from various governments involved in annexations or disincorporations and for reasons of noncompliance with the requirements of the State and Local Fiscal Assistance Act, as amended.

Estimated Effect: The release of these funds is contingent upon adherence by the various governments to the compliance regulations, and determinations as to which higher level of government is eligible to receive those funds withheld because of annexations and disincorporations.

Outlay Effect: This deferral action has no effect on outlays.

1/ This account is currently the subject of another deferral in FY 1981 (D81-18) and was the subject of a similar deferral in FY 1980 (D80-23A).

2/ Deferral of outlays only.

* Revised from previous report.

BILLING CODE 3110-01-C

Deferral No: D81-26

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Tennessee Valley Authority	New budget authority (P.L. 96-367): $ 18,000,000
Bureau:	Other budgetary resources: -0-
Appropriation title & symbol: Tennessee Valley Authority Fund (Columbia Dam & Reservoir) 1/ 64X0111	Total budgetary resources: 18,000,000
	Amount to be deferred: Part of year: $ 15,800,000
	Entire year: ____
OMB identification code: 64-4110-0-3-452	Legal authority (in addition to sec. 1013): [ ] Antideficiency Act
Grant program: [ ] Yes [ ] No	[ ] Other ____
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: P.L. 96-367 provided $18 million in new appropriations for continued construction of the Columbia Dam and Reservoir project. In addition, the Senate Appropriations Committee report (Sen. Rpt. 96-927) -- issued in conjunction with P.L. 96-367 -- recommended that $17 million in funds provided for this project that were deferred at the beginning of FY 1981 (D81-22) be applied to finance on-going TVA programs. These funds were released on October 31, 1980.

The Fish and Wildlife Service has issued a biological opinion that the completion of the Columbia Dam project as presently planned would jeopardize the continued existence of certain endangered mussel species -- the birdwing pearly mussel and one other. Completion of the project as originally designed requires: (1) the delisting of the affected species, (2) an exemption under the 1978 Endangered Species Act Amendments, or (3) a favorable modification in the Fish and Wildlife Service's biological opinion.

To resolve this problem, TVA has worked closely with the Department of Interior (Fish and Wildlife Service) to develop a conservation program which will allow completion of the Columbia Dam and Reservoir as planned and ensure the long term survival and growth of the endangered mussel species. No action to impound the reservoir (including placement of fill material) may be taken until the success of this mitigation program is assured to the satisfaction of the Fish and Wildlife Service.

1/ This account was the subject of similar deferrals in FY 1980 (D80-31) and earlier this year (D81-22).

Completion of the project is dependent upon issuance by the Corps of Engineers of a permit under Section 404 of the Clean Water Act for placement of fill material. The Environmental Protection Agency (EPA) has requested that the Corps delay issuing the permit pending the outcome of an administrative appeal to EPA by opponents of the project. The Corps agreed to this request and has not yet issued the permit.

As a result of these impediments, work on the project must now be confined to implementation of the conservation program, and archaeological, historical, cultural and water quality studies. Upon completion of the water quality studies, engineering design modifications to the Columbia Dam discharge structure may begin. Based upon recent estimates, $2,200,000 is needed to conduct these activities in FY 1981 and the remaining $15,800,000 is deferred pending resolution of the legal and environmental matters.

Estimated Effect: The construction of various portions of the Columbia Dam will be delayed pending resolution of the legal and environmental problems.

Outlay Effect: This deferral, by itself, has no outlay effect. However, the legal matters delaying this project, which have brought about the deferral, have the effect of postponing use of the deferred funds until those matters are resolved.

[FR Doc. 80-37884 Filed 12-4-80; 8:45 am]
BILLING CODE 3110-01-M

federal register

Friday
December 5, 1980

Part VIII

Department of Agriculture

Food and Nutrition Service

Food Stamp Program: Monthly Reporting/Retrospective Accounting and Demonstration Project

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7CFR Part 273

[Amendment No. 184]

Food Stamp Program: Monthly Reporting/Retrospective Accounting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: The Department is proposing procedures for the Food Stamp Program that would enable a State agency to elect a system of Monthly Reporting/Retrospective Accounting (MR/RA). Under this system, a household would mail in reports of its monthly income, deductions, and other household circumstances. Then the State agency would use these retrospective figures, rather than prospective estimates, to compute the household's eligibility and coupon allotment. MR/RA is intended to help States to reduce error rates by using verifiable data instead of data developed through estimates and projections. In addition, these rules simplify program administration by allowing a State to utilize MR/RA for those food stamp households which are already subject to such a system for the Aid to Families With Dependent Children (AFDC) program. The Department intends to hold an open meeting to discuss these regulations. When final arrangements have been made, the Department will publish the time and location of the meeting in the **Federal Register.** All interested parties, including Program and computer personnel from those State agencies currently operating or planning to operate a MR/RA system for the AFDC program, are strongly urged to attend.

DATES: Comments must be received on or before February 3, 1981 in order to be assured consideration. After reviewing all comments, we will publish final regulations. In addition, the Department will hold an open meeting on January 5, 1981 to discuss these regulations.

ADDRESS: Comments should be submitted to: Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250. Inquiries or comments about the planned open meeting to discuss these regulations should also be submitted to this address. The Department will publish the time and location of the meeting in a future issue of the **Federal Register.**

All written comments will be open to public inspection at the office of the Food and Nutrition Service, USDA, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street S.W., Washington, D.C., Room 678.

FOR FURTHER INFORMATION CONTACT: Susan McAndrew, Chief, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250; 202–447–6535. A draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above named individual.

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."

Background

Current procedures for computing income and allotment levels in the Food Stamp Program are based on a system of prospective budgeting. The eligibility work (EW) calculates household need by estimating future income, resources, and deductible expenses at the time of certification. The EW considers a household's past income and deductions as an indicator of what its financial circumstances will be during the certification period. However, the EW does not use only past income and deductions to predict future household circumstances for the certification period, but also considers changes that have, occurred or can be anticipated in projecting an income amount for future months so that the food stamp benefits a household would receive correspond to the income available to purchase food. There is no regularly scheduled update of these estimates to ensure a reexamination of benefit levels except at the time of recertification. If changes occur during the certification period, the household is required to report such changes to the EW so that household benefits can be adjusted. If the State agency becomes aware of a change affecting certain households, either through a third party or a general benefit change in a related program (e.g. Social Security), household benefits levels are also adjusted. Errors can result if household circumstances change in future months but are not reported by the household, or are not acted on by the State agency, in a timely fashion.

Retrospective budgeting, on the other hand, relies upon hindsight to determine a household's eligibility and benefit levels. Combined with a system of periodic status reports from participants, MR/RA provides a regular mechanism to update a household's benefit level. The household reports its actual income and deductions for a particular month; the State agency processes this information and then issues benefits to the household. Since it is not necessary to predict how much income will be available for the future, retrospective accounting may result in fewer errors than prospective accounting, although demonstration projects in other benefit programs have so far not confirmed that this is the case. The drawbacks to such a system are the administrative cost and burden of processing reports each month, the time lag in providing benefits to households, and the increased paperwork burden on large numbers of low income households, some of whom may have difficulty in completing government forms on their own. The food stamps a household receives in one month are based on a prior month's income and circumstances and may not correspond to its current need for food assistance.

With the passage of Pub. L. 96–249, 94 Stat. 357, May 26, 1980, the Food Stamp Act Amendments of 1980, Congress (in Sections 107 and 110–113) provided that a State agency which elects to implement a MR/RA system may do so, using the guidelines developed by the Secretary.

The law stipulates that all newly-applying households would be certified for the initial month of eligibility under the current prospective accounting procedures. The State would also employ prospective in subsequent month(s), as necessary, to avoid counting income received prior to the date of application. Prospective accounting during the early months for newly certified households would respond to their immediate need for food assistance. After this initial period, the household would report its actual financial circumstances using the monthly report and food stamp benefits thereafter would be calculated based on actual figures rather than projections.

The Department of Health and Human Services (HHS) has provided a State option for retrospective budgeting in its Aid to Families with Dependent Children (AFDC) program. California, Illinois, Kansas, Michigan, Oregon, and Washington have implemented the system and several additional State agencies are participating in a MR/RA demonstration project. In developing

these regulations, the Department has worked closely with the Department of Health and Human Services' (HHS) representatives, taking into consideration the results of their experience. Every attempt has been made to standardize the MR/RA system, acknowledging that the requirements of the Food Stamp and AFDC Programs will continue to vary.

Introduction

In designing a proposed system for MR/RA, the Department established four fundamental principles:

—Monthly reports should be as easy for program participants to complete as possible. The questions on the forms should be simple, should not present participants with numerous options and decisions, and should require consistent information month after month so that form completion becomes a familiar routine.

—Program participants that are in MR/RA should be in no worse position than excluded participants.

—MR/RA systems for the Food Stamp Program should be compatible with AFDC systems to the maximum extent possible, taking into account basic differences in the requirements and procedures of the two programs.

—MR/RA should endeavor to remove the uncertainty associated with attempting to anticipate income and other household circumstances, and to reduce error rates through a systematic mechanism to report changes in household circumstances.

The procedures developed for MR/RA work on a cycle of three distinct time periods: the budget month; the processing period; and the issuance month. The household fills out and mails in the monthly report, the State agency takes the necessary action, and food stamp benefits are issued.

An exception from the cycle of using income received in a previous month to calculate the benefits for a subsequent month is established for households experiencing a sudden and significant change in income or households gaining a new member. The law calls upon the Department to make modifications or exceptions to MR/RA income procedures to accommodate these households. The provision of supplemental food stamp benefits is based on the household's immediate need rather than its prior situation.

The system is designed with other flexibilities and options so that those State agencies who wish can merge food stamp MR/RA with their monthly reporting system for AFDC households or can use the system as a tool in attempting to reduce the quality control error rate. Those options are explained in the more detailed discussion of major issues below.

Administration

The Act and legislative history clearly state that State agencies are to be given the option of operating a monthly reporting/retrospective accounting system. It is equally clear, however, that the Secretary is to prescribe standards under which such systems will be operated. To ensure that MR/RA systems will operate in an efficient and effective manner, the Department is proposing five criteria which must be met before FNS gives its approval. It is envisioned that these criteria be met sequentially; FNS would be available to provde technical assistance in all phases of the process. As a first step, the State would have to demonstrate its ability to manage a MR/RA system effectively. In making this determination, FNS would consider evidence such as a sound general system design, availability of personnel and computer equipment as necessary, and ability to process MR/RA information. Second, in providing detail to the general system design, each State agency would have to verify that the requirements specified in final regulations are met. The third criterion, which is discussed in greater detail below, is that the State agency pretest the MR/RA system. Testing will give assurance that both participants and State agency personnel can adapt to the requirements of the system. The fourth requirement is the development of operating guidelines which clearly delineate the responsibilities of participants, eligibility workers, and data management workers in the system's operation. Such material would be approved, if acceptable, by FNS Regional offices as all other material is currently approved. The fifth and final criterion is that all forms developed as a result of the MR/RA procedure receive FNS approval. While FNS will develop model forms, it is anticipated that the majority of States opting to implement MR/RA will seek approval to modify such forms to accommodate existing AFDC systems or data processing needs.

Before implementing MR/RA systems, State agencies would solicit public comments on the operation and requirements of their proposed systems. A requirement for soliciting public comment is proposed in order to ensure that the needs and circumstances of the low-income population in each State are fully addressed. States would solicit public comment in accordance with public comment procedures to be prescribed in forthcoming final regulations on State Plans of Operation. These procedures provide States with a number of options for procedures to use in soliciting comment.

The most critical step in the approval process is the State agency's conduct of a pretest. It is essential that the impact of the proposed system on participants and State agency personnel be clearly assessed. The pretest would be designed to measure: (1) clients' understanding of their responsibilities under the MR/RA system and ability to complete the related forms and (2) the State agency's ability to provide appropriate forms to clients, process information received, and issue benefits and notices within the appropriate time frames. The pretest would allow the State agency to make the necessary modifications to the system. In addition, based on the pretest results, FNS would be better able to determine the ability of the State agency to effectively manage a MR/RA system. For those State agencies currently operating a MR/RA system for AFDC which wish to add the food stamp component, the pretest would be somewhat more limited in scope. Given that the State's AFDC system was functioning effectively, the goal of the pretest would be to ensure that clients were able to understand and complete the revised form.

As a final point, while MR/RA would modify the methodology used in various procedural aspects of program administration, such as the basis for determining eligibility and benefit levels and processing of information, all aspects of program administration not specifically modified by this section of the regulations would remain in effect for both State agencies and participating households.

Definitions

Because MR/RA represents a departure from FNS' normal prospective budgeting methodology, a new set of definitions specifically tailored to MR/RA has been developed.

(1) Adequate notice—Since State agencies will be taking action based on the information contained on the monthly report, the current concept of a 10 day notice of adverse action has been modified. State agencies will provide participant households with information on how benefit levels and eligibility were determined. However, based on a State agency's processing time and the date of submission of the monthly report, such information may not be able to be provided to participating households ten days prior to the normal benefit issuance date. To protect households, while still allowing the MR/

RA system to be administratively operational, the rules provide that a household be given adequate notice of a change in benefits no later than the normal date of issuance of those benefits, and that the mailing date of the adequate notice be followed by a ten-day period in which the household could contest the action, request a fair hearing, and have benefits restored. This approach is consistent with requirements in HHS regulations governing MR/RA systems in the AFDC program.

(2) Budget month—The budget month concept is an integral part of the MR/RA system. The budget month is the period of time covered by the monthly report. Once retrospective accounting has begun, information from the budget month serves as the basis for determining household eligibility and benefit levels.

(3) Certification period—The concept of a certification period assumes a different dynamic with the introduction of MR/RA. When prospective accounting is used, certification periods cover the period of time over which future circumstances can be reasonably predicted. MR/RA gives the State agency the ability to detect and react on a monthly basis to changes in household circumstances. Thus, given the State agency's ability to adjust benefit levels and the household's requirement to regularly report its circumstances, the minimum certification period would be six months. While consideration was given to assigning households indefinite certification periods, periodic client—eligibility worker contact and review of household circumstances was determined important in ensuring program integrity.

(4) Issuance month—In a MR/RA system, the issuance month refers to the period of time for which benefits are issued. Benefit levels in the issuance month are based on information from the budget month. Depending on the State agency's system, the issuance month may follow the budget month by as little as fifteen days but will normally follow the budget month by a full month.

(5) Prospective accounting—Prospective accounting refers to the current method of determining household eligibility and benefit levels—estimates are made of future month's circumstances and households are required to report changes when those best estimates are incorrect.

(6) Retrospective accounting—Retrospective accounting is a method of calculating eligibility and benefit levels which relies on actual circumstances in a previous month rather than prospective information.

(7) Supplemental benefits—Because retrospective accounting relies on prior month information to determine issuance month benefits, the concept of supplemental benefits has been introduced. Supplemental benefits will be issued during any issuance month when the household's gross or net income has fallen significantly, its deductible expenses have risen sharply, or a new household member joins the household.

Included Households

The regulations propose to allow the State agency a wide degree of latitude in determining which portion of the food stamp caseload will be included in the MR/RA system. The State may institute MR/RA in one or all project areas in the State. The State may choose to include AFDC/FS households only, non-assistance food stamp households only, or both AFDC/FS and non-assistance households, with the exceptions noted below.

Both the law and legislative history recognize that inclusion in the MR/RA system may not be practical to the circumstances of all households. While migrant farmworker households are specifically mentioned in the House Committee Report (Report No. 96–788, 96th Cong., 2d Sess., p. 85) as a category of households which should be excluded from MR/RA, the Secretary is given discretion to determine other classes of households which would also be excluded. In reviewing the existing categories of food stamp households, the Department has determined that in addition to households that are part of the migrant stream, four other categories of households should be excluded from the MR/RA system. The first of these is households with a member on strike, provided that the household was not certified before the date the strike began. This exclusion is established due to the likelihood of such persons returning to work within a short period of time. Under a retrospective system, these households could continue to draw benefits for a period of time after returning to work. The transition to a retrospective accounting system is impractical for these households, both from an administrative and a fiscal viewpoint. Such households would continue to be certified in accordance with prospective accounting procedures.

The second type of household the Department proposes to exclude from MR/RA is one without earned income and in which all members are either elderly or disabled. Since income of such households is normally stable, generally being derived from either Retirement, Survivors and Disability Insurance (RSDI) or Supplemental Security Income (SSI) payments, the Department believes that their inclusion would serve no useful purpose. In addition, the Department believes that a requirement to complete a report each month upon penalty of having benefits cut off could result in hardships for elderly and disabled households. The House Committee Report urges that such household be excluded from MR/RA.

The third category would be those households which the State agency knows will be eligible for food stamps for only a temporary period. An example of such a household would be a person who recently was laid off and applies for the program in June and who will be starting a job in August which would make him ineligible for food stamp assistance. The Department believes that inclusion of households which would be eligible for the Program for three months or less would result in both administrative inefficiency and a potential issuance of benefits to households after their income has risen over the eligibility limits. These households would be identified on a case-by-case basis by the State agency.

The fourth category of households that the Department proposes to exclude consists of some households requiring special assistance in applying for food stamps. If households have an ongoing need for special assistance in completing a monthly report and such special assistance is not available, they would be excluded. Like the third category, these households would also be identified individually by the State agency. This determination would be made at the time of application or conversion to the MR/RA system and would be based on the State agency's perception and knowledge of household circumstances. Examples of households that may be excluded under this provision would include the disabled, non-English speaking persons in areas without bilingual services, and persons whose reading and writing skills are so limited that they cannot complete the report form on their own. Under no circumstance would the State agency require the household to obtain its own special assistance in completing a monthly report as a condition of eligibility.

Information on System Operation

Because of the impact of the MR/RA system on household benefits, it is of critical importance that applicant and participant households thoroughly understand how the system works and what their specific responsibilities are. To accomplish this, the proposed rules require the State agency to provide both

oral and written information on the system's operation, including the availability of supplemental benefits, and the telephone number of a person for the household to contact if there is difficulty in completing a report or in understanding any of the system's components. In addition, it is proposed that during the normal certification interview, the State agency explain to each included household how to comply with MR/RA requirements, including how to complete and file the report, and what verification should be submitted with the report.

Determining Eligibility and Benefit Levels During the Initial Months

To alleviate hardships which would result from applying retrospective budgeting techniques to applicant households who had recently experienced a change in circumstances, the regulations provide for the use of current prospective budgeting techniques in the initial months of eligibility. For the initial months of household certification, the State agency would determine eligibility and benefit levels in accordance with current prospective accounting procedures. The actual number of months during which a household's benefit level and eligibility would be determined prospectively would be dependent upon the time it takes for the conditions discussed in *Transition to the MR/RA System* below to be met. In gathering prospective data from a household, the State agency would assume that a maximum number of months would be required to convert the household to retrospective accounting to assure that sufficient prospective data is obtained. The State agency would make every reasonable effort to obtain complete and accurate household data for the period of prospectivity. If, however, a monthly report subsequently shows that income or other household circumstance anticipated earlier was inaccurate, the State agency would not issue a claim against the household unless the household failed to provide available information or a State agency error was involved.

Transition to the MR/RA System

The proposed regulations establish four criteria for converting participating households to the MR/RA system and entering newly applying households into this system. The general principles behind this section are that: (1) income received prior to the date of application not be included in retrospective income calculations; (2) households not be required to submit monthly reports prior to receiving their initial notice of eligibility; (3) households have enough time to complete and submit the report; and (4) scheduled issuances not be delayed or interrupted.

First, to avoid the inclusion of income received prior to the date of application which may not be currently available, the regulations provide that the initial budget month would not be earlier than the first full month subsequent to the date of application. For example, if a household applies for benefits on March 15, the first budget month could be no earlier than April if the State operates on a calendar month basis. The House Committee Report directs that income received prior to the date of application not be used in retrospective accounting.

The second proposed criterion is that a household could not be required to submit a monthly report prior to receiving its notice of eligibility. This is proposed because the Department believes that it would be both confusing and unfair to expect a household to complete and file a monthly report if it is unsure whether its application has been accepted or rejected. The House Committee Report directs that such a provision be included in MR/RA systems.

The third and fourth criteria relate directly to the second. The household would have to be notified of its eligibility, receive the monthly report, and have a minimum of five days from receipt of the report to the filing due date. This is similar to the requirement in AFDC regulations. The Department believes this minimum period is necessary to allow the household to complete the report, collect the necessary verification and provide for normal mailing. The final point involves the household's issuance schedule. If the processing time for the State agency is such that the next regularly scheduled issuance of benefits would be delayed, retrospective accounting would not be initiated until the next issuance month. This is done to ensure that transition to the MR/RA system does not interfere with the processing standards nor with the household's right to receive already authorized benefits.

Monthly Reporting

Monthly reporting by participating households provides State agencies with the necessary information to make retrospective determinations of household eligibility and benefit levels. Because the system is dependent on this information, the regulations propose that the submission of such reports become a condition for continuing a household's eligibility for the program. A household's failure to submit the required monthly report would make it impossible for the State agency to make a determination of either eligibility or benefit levels. While the submission of a completed, signed monthly report would be a condition of continuing eligibility, the State agency would not be allowed to impose any additional change reporting requirements. The monthly report would then become a uniform, single method for household communication with the State agency, although the household could voluntarily inform the State agency of changes in other ways. The State agency would be required, if necessary, to contact the household in response either to the information on the report or to information which has otherwise become known to the State agency.

Because the monthly report is so vital to the system, the Department has proposed requirements for its distribution, submission, and content. To ensure continuity and avoid confusion, the regulations state that the monthly report be received by the household around the same date each month. The regulations further propose that the form be given to households sufficiently in advance of the filing date to allow at least five days for form completion and mailing time before the filing due date. As discussed above, this time period is considered sufficient for filling out the report, gathering the necessary verification and mailing. As a complementary requirement, it is proposed that the filing date for the monthly report be no earlier than five days after the end of the budget month. This requirement is intended to ensure that the household has sufficient information in hand to fully complete the report based on actual circumstances for the budget month. Because of postage costs, the regulations also would require that the State agency provide each household with a postage paid, return envelope for the form. The requirement is directed by the House Committee report, and is also required by the HHS regulations governing MR/RA systems in the AFDC program.

It is the Department's intention to design a model monthly reporting form that State agencies may elect to use. It is recognized, however, that many States which will opt to initiate a MR/RA system for food stamps may already have such a system for their AFDC caseload and will be using a joint AFDC/FS reporting form. It is also recognized that most MR/RA systems will be supported by a highly sophisticated, automated data processing system and that the MR form will be designed to accommodate system needs. Therefore, most States

will likely design their own forms. The rules propose that specific limitations be placed on the contents of the form, except in the case of a joint AFDC/FS form where additional questions needed to determine AFDC eligibility may be posed. In any case, the monthly reporting form will have to be designed to ensure that clients understand both the questions and the actions that will be taken by the State agency on the information provided. The report also must inform clients of the actions that they must take, including what verification must be submitted and the date by which the report must be filed; and advise the household of its rights and responsibilities. With regard to verification, the Department is proposing verification requirements for monthly reporting which closely resemble the general verification requirements which the Department proposed on August 12, 1980, (45 FR 53792). In issuing final monthly reporting regulations, the Department will consider comments received on both proposed rulemakings. The Department proposes that two basic verification requirements would be stated on the form. First, all households reporting earned income would be required to submit documentation of such income with each report. Second, households wishing to claim a utility expense in excess of the standard would have to submit the bill as proof of that expense. The Department has identified these two items as being most subject to variation from month to month. The State agency would also require the household to provide verification of medical expenses. It is proposed that State agencies be given the option of requiring verification of all medical expenses every month or only when total medical expenses change by more than $25. State agencies would also require verification of additional reported items which it had either identified through the use of an error-prone profile or which it had opted to verify under the procedures contained in § 273.2(f)(9)(ii). Verification requirements could not be extended beyond those established under § 273.2(f)(9)(ii) except in the case of a joint AFDC/FS report form where broader AFDC verification requirements could be imposed, and then only on AFDC/FS cases.

It is also proposed that in areas subject to the existing bilingual requirement, the form must be provided in the appropriate foreign language. The State agency may also develop a method, subject to FNS-approval, which would include non-English speaking households in the MR/RA system in these areas that are not subject to the bilingual requirements. This provision is designed to make the system accessible to as many households as possible as well as make it fair to these households.

The form would specify a source of additional information at the State agency which the household could contact and specify how the household could apply for supplemental benefits. Other requirements would include a statement to be signed by the head of the household indicating his or her understanding that changes in benefits could result from the information provided. These specifications are designed to ensure that the household is adequately protected and informed and are in conformance with HHS regulation on AFDC MR/RA. The regulations also propose the financial and non-financial items that the households must report. These items are believed to be the most fluctuating and include the items currently required by the existing reporting regulations.

The Department requests that commenters address themselves directly to the proposed contents of the report, the verification requirements and any problems foreseen in merging such reporting requirements with existing AFDC reporting requirements.

Special attention is drawn to the fact that the proposed form requests information on infrequent or irregular income. Under porspective accounting, infrequent or irregular income of under $30 per quarter is excluded. This proposed regulation eliminates this exclusion under MR/RA. The Department is interested in comments on the desirability of this approach. Other options under consideration include providing an exclusion of infrequent or irregular income of up to $10 a month (and not requiring such amount to be reported on the monthly report form), and allowing States the option of whether to require reporting of infrequent or irregular income of under $10 a month, with a corresponding exclusion where this income is not required to be reported. The Department is interested in comments on potential difficulties involved in verifying and counting these small amounts of infrequent or irregular income, and also on potential difficulties of a $10/monthly exclusion. The Department is interested in comment on which approach would produce the fewest errors.

State Agency Action on Reports

This section of the proposed rules sets forth actions for State agencies to take subsequent to the filing due date. The State agency would be responsible for reviewing all reports to ensure their receipt, accuracy and completeness. The State agency would determine that a report was incomplete only if the household head had failed to sign the report or had omitted necessary information or verification. If a joint AFDC/FS monthly report was used, the report would only be incomplete for food stamp purposes if the household head failed to sign the report or to enter information necessary for a determination of food stamp eligibility or benefit level.

The State agency would then review the monthly report to identify missing verification. One category of missing verification would be documentation of earned income or shelter expenses resulting in a deduction. This verification must be provided by all households. A second category would be verification which is required only when unearned income changes by more than $25 from the previous month. Thirdly, State agencies would require households to verify medical expenses either every month or when total medical expenses changed by more than $25. It is proposed that each State agency would choose one of these two standards. Lastly, the State agency would require the household to verify questionable information and information which the State agency had identified as being prone to error. Information such as the work status of a new household member, the equity value of a new automobile or similar data might be identified as obtainable through personal contact with the household. The State agency would, to the extent possible, attempt to rectify problems with the monthly report through direct personal contact, such as a phone call. However, if the household had failed to submit the monthly report, the report was incomplete, verification was missing, or the report was unsigned, the State agency would send a notice to the household, informing it of any further action it was required to undertake and of the extension period due date. The Department has also proposed procedures for the State agency to follow in those instances where the necessary verification is not submitted by the end of the extension period. The Department urges the public to review these procedures closely and offer specific recommendations for any changes believed necessary.

Of particular note is the fact that State agencies would not make changes resulting in increased benefits unless verification supporting such changes is submitted. This proposed departure from the proposed verification regulation, which allows States the

option of increasing benefits, is made based on the nature of retrospective accounting. Verification of a change such as increaded allowable expenses or a decrease in income would generally be available by the time the monthly report is to be submitted.

Once the reports have been received and reviewed for completeness, the State agency would be responsible for using the information contained in the reports to determine household eligibility and calculate benefit levels. Households' benefit levels would be calculated in accordance with current procedures but would be based on earned or unearned income received or averaged for the budget month, deductions as billed or averaged for the corresponding budget month, and household composition as of the last day of the budget month. Households would, as in current regulations, be provided the option of having shelter expenses which are billed less often than monthly averaged.

As a final step in processing, the State agency would be required to issue benefits in accordance with current issuance procedures.

Notices

Because the MR/RA system has the potential for causing month-to-month variations in benefit levels and/or eligibility, the State system would have to be designed to provide participating households with complete and timely information on the manner in which eligibility and benefit levels were determined. All such notices would be required to meet the definition of adequate notice as defined in this section. In the event that household benefits were being reduced or terminated, the State agency would be required to mail the adequate notice so that the household recieves it no later than the normal issuance date. By providing such adequate notice in conjunction with the reduced benefits or in lieu of the terminated benefits, the household would have sufficient information on the cause and result of the change to decide whether or not to contest the action within the ten-day reinstatements period.

In those instances where the State agency had not received a complete and signed monthly report by the filing due date, the State agency would be responsible for notifying the household within five working days of its failure to report. The notice would contain information on the penalty for failing to file a complete, signed report; and specify the reason the report is incomplete and those actions the household would be required to undertake to complete it. The notice would also be required to inform the household of the extended filing due date, which would be no earlier than ten days after the date on which the notice was mailed. As part of the notice, the State agency would be required to offer the household its assistance in the completion of the report.

If the household has failed to submit a complete, signed monthly report by the end of the extension period, the State agency would be required to send the household an additional adequate notice, informing the household that benefits would not be issued, and explaining the reason for the nonissuance. Such notice would also inform the household of those actions which it would be required to undertake if it wished to be reinstated. It is proposed that notices regarding termination reach affected households ten days before the expected benefit issuance date whenever possible. That date may be the normal issuance date or the extended issuance date. It is recognized, however, that in those States where the issuance month is the month following the budget month or in those instances where late filed reports are also incomplete, this may not be possible. In such situations, the State agency would be required to notify the household by the issuance date corresponding to the late filing date for the report.

Issuance

The proposed rules provide a schedule for State agency issuance of benefits once the completed, signed monthly report has been received. With certain exceptions, the State agency would be required to provide eligible households which file a complete, signed monthly report by the due date with an opportunity to participate within thirty days of the end of the budget month. The specific exceptions to the one month benefit provision would be for reasons such as security (the necessity of staggering mails of ATPs or coupons) or for coordination with an AFDC issuance system. Such exceptions would require FNS approval and under no circumstances would the normal issuance date be extended later than 45 days beyond the end of the budget month.

The regulations also provide that the State agency establish an extension period during which time households could file a missing report or complete an incomplete report without undue penalty. While the regulations would require a minimum 10 day extension period, the State agency could have a longer extension period under the condition that eligible households filing a complete signed report be provided an opportunity to participate no later than 45 days following the budget month. For those households submitting a completed, signed report during the extension period, the State agency could delay benefits ten days but no later than the 45th day from the end of the budget month. For those households filing after the extension period but prior to the end of the issuance month, the State agency would still issue an allotment, but would have an extended time period in which to do so.

Suspension and Conversion

Because the MR/RA system is extremely responsive to changes in income, the regulations would establish a procedure whereby households losing their eligibility due to a temporary change in income could be quickly brought back into the program. Rather than terminating such households, the State agency would be required to place them in a suspended category; sending them, at a minimum, one additional monthly report. If, on the basis of the subsequent report, the household is eligible, benefit issuance would resume in the corresponding issuance month on the household's normal issuance date. Households placed in a suspended category would also be qualified to receive supplemental benefits, if eligible. If a suspended household requests supplemental benefits and is found eligible, the State agency would be required to issue such benefits within the normal five working day timeframe.

The proposed rules also establish a conversion procedure which would be used in those instances where only a portion of the food stamp caseload was subject to the MR/RA requirements. If, for example, only the AFDC caseload was subject to MR/RA and a household lost its AFDC eligibility but still remained eligible for food stamps, the State agency would continue to issue benefits on a retrospective basis for one additional month. In notifying the household of its AFDC termination, the State agency would also provide the household with a food stamp notice of expiration. The State agency would have to issue the notice of expiration in sufficient time to allow the household to apply for recertification and receive uninterrupted benefits, if eligible, using prospective accounting procedures.

If the household were to lose its AFDC eligibility due to a temporary change in circumstances, the State agency would have the option of issuing benefits to such a household on a retrospective basis for two additional months. If this option were chosen, the

State agency would have to send the notice of termination in sufficient time to allow the household to reapply as a non-assistance household if, based on the second report, it remained ineligible for AFDC benefits.

Termination

The proposed rules further provide for the termination of those households who fail to file a monthly report, fail to file a complete report, or fail to comply with a non-financial eligibility requirement, such as work registration. As discussed above, households failing in any of the aforementioned areas would be notified by the State agency. In the event a household did not comply with the requirement by the end of the extension period, the State agency would issue a final notice of termination. The notice would advise the household of what it would need to do to be reinstated and of its rights to request a fair hearing and to receive continued benefits until the fair hearing decision is reached. Households reapplying in the month of termination could receive benefits for that month. Their benefits and eligibility would be determined on the basis of information contained in a completed, signed monthly report for the corresponding budget month.

Supplemental Benefits

Due to the fundamental reliance of MR/RA on past month information, the proposed rules establish a procedure to provide additional benefits to those households experiencing a significant change in household circumstances after the end of the budget month. Additional, or supplemental, benefits would be available to eligible households during those months when either the actual income available to the household in the issuance month lags substantially behind the income reported for the budget month or an additional household member is added.

The Department has established three triggers for determining a household's entitlement to supplemental benefits. Two of these triggers—a decrease of more than fifty dollars in gross income between the budget and issuance months and the addition of one or more new household members—are specified in the legislation. The additional trigger proposed by the Department has been developed to respond to financial changes, such as increased expenses, which have a net effect similar to a fifty-dollar decrease in gross income. Specifically, the Department has proposed that households whose net income is fifty dollars lower in the issuance month than in the budget month also be eligible to receive supplemental benefits. As a clarification, the Department has proposed that households in the initial month of either suspension or termination also be eligible to receive supplemental benefits, if qualified. This has been proposed in recognition of the fact that household circumstances can fluctuate widely from month-to-month and households experiencing such changes should have the opportunity to easily return to program participation.

Once the State agency has determined that a household is entitled to supplemental benefits, the regulations propose a specific procedure for the calculation of such benefits. In developing the methodology for the supplemental benefit calculation, the Department has adopted the principle that the household's full level of need in the issuance month will be considered. Thus, as a first step in determining the amount of the supplemental issuance, the State agency would calculate the household's coupon allotment on a prospective basis using factors of financial and non-financial need from the issuance month. Such calculation would be based on income and deductions as received or billed or anticipated to be received or billed during the issuance month. In determining the amount of the supplemental issuance, the State agency would compare the value of the allotment received by the household during the issuance month, exclusive of any food stamp claims or retroactive benefits received, to the value of the prospectively calculated allotment for the issuance month. The difference between the two would then be the value of the supplemental issuance.

To ensure that sufficient information is available to the State agency to make a prospective benefit level determination, the Department has proposed that all requests for supplemental benefits be made in writing by the household using either the FNS form or a form designed by the State agency and approved by FNS. In designing its own supplemental benefit request form, the State agency would follow the same basic principles established for the monthly report form: that it be simple to complete and easily understood.

Under the proposed rules, the State agency would have the option of designing a form which would allow data to be gathered for two prospective months for those changes, such as an increase in household size, which are expected to continue into the subsequent month. If the State agency exercised this option, supplemental benefits could be issued in two successive months. In those States where the State agency has not exercised this option, households would have to prepare a separate supplemental benefit request form for each month in which a supplement was desired. The Department considerd proposing that requests for supplements based on changes which were permanent (such as a change in household size resulting from a birth) would trigger two months of supplements. While this appeared to be beneficial to participants (such changes would only have to be reported once), we were unsure of the ability of States' computer systems to handle such a requirement. In preparing comments, we would like to see particular attention focused on this issue. We welcome a discussion of any other options in this area.

To ensure that participating households have the ability to request supplemental benefits without delay, the proposed rules provide that each household be issued at least two supplemental request forms at either the point of application or certification. To ensure their ongoing availability, State agencies would be given the option of either sending a blank form to the household each time supplemental benefits are provided or denied, or providing the form as an enclosure to the monthly report form, or providing the form no later than the date the monthly allotment and benefit explanation sheet are provided to the household. Regardless of the manner in which supplemental request forms are provided, the State agency would be responsible for ensuring that each household is able to file a supplemental benefit request, either by mail or in person, on the same day that the household expresses a desire to request such benefits.

Under the proposed regulations, the State agency would be responsible for issuing eligible households ATPs or coupons within five working days of the date of the State agency's receipt of the form. A five working days requirement for issuance of supplemental payments also appears in AFDC regulations. The State agency would make every effort to verify changed circumstances in accordance with the requirements of § 273.2(f)(9)(ii). If the State agency is unable to complete the necessary verification within these timeframes but the household is otherwise eligible, the State agency would not delay issuance beyond the five working day issuance standard. However, if in the next month the household again requests a supplemental issuance based on the

same change, the supplemental benefits would not be issued until the necessary verification was provided. These verification requirements are consistent with those proposed for expedited service cases in the August 12, 1980 rulemaking (45 FR 53792). It should be noted that a QC variance would be provided for errors in supplemental payments made without verification, as is currently done for expedited service cases. The final provision related to the circumstances under which a supplemental issuance would be provided relates directly to the concept of the need for a supplemental issuance. As discussed above, a supplemental issuance is designed to bridge the gap between the month in which a change occurs and the month in which the change is reflected in the benefit level. To receive supplemental benefits, the household would have to request the supplemental issuance in a month in which the supplemental benefit would be triggered. A household would not be able to request supplemental benefits in February based on a change which occurred only in January and did not continue into February.

Subsequent to the household requesting suppemental benefits, the proposed rules provide that the State agency would notify the household of its decision on the provision of the supplemental benefits. Such notification would take the form of a benefit explanation sheet which would inform the household if its request was accepted or denied, provide information on how the benefit was calculated, and inform the household of its right to a fair hearing if it disagrees with either the disposition of the request or the amount of the supplemental benefit. Although HHS does not have this requirement for its AFDC MR/RA system, many States operating a MR/RA may already provide such a form. Specific comments on the feasibility of this requirement are requested.

Action on Information From Sources Other Than the Reporting System

While the proposed rules provide that households would not be required to report changes outside the monthly report, information may come to the attention of the State agency in other ways. This section of the proposed regulations discusses the manner in which such information would be handled. If such information indicates that the household may be entitled to supplemental benefits, the State agency would be required to contact the household, suggesting to the household that it submit a supplemental benefit request form. This requirement is consistent with directives in the House Committee report. If the household reports information which should have been reported on the monthly report form and the corresponding issuance month has not passed, the State agency shall either adjust the allotment for the issuance month, if possible, or issue a supplemental allotment if the household is entitled to one. In those instances where the State agency becomes aware from a source other than the household of a change which would decrease the household's benefits, the State agency's initial action would hinge on when the information was received. If the monthly report covering the period in which the change occurred has not been received, no action would be taken pending receipt of the report. Once the report is received, or if the appropriate report has already been submitted, immediate action would be taken if the report does not reflect this change. Once the questionable report was in-hand, the State agency would contact the household to verify the change. If the household confirms and thereby reports the change, the State agency would either adjust future benefits or prepare a claim against the household dependent upon whether benefits based on the appropriate monthly report had or had not been issued. If the household does not confirm the change yet the State agency is sure that the third party information is correct, the State agency would issue a notice of adverse action in accordance with normal procedures. In such instances, since the change would not have been reported by the household under the MR/RA system, the household's rights to a 10 day advance notice of adverse action would remain.

Subsequent Participation

To eliminate a constant shifting from retrospective to prospective accounting, the Act states that households reapplying in the thirty day period following the end of a certification period be certified using retrospective accounting techniques. In addition to ensuring the continuity of accounting procedures, this provision avoids the possibility of a household manipulating the system by dropping out of the program during a month in which a significant income increase would be reflected in the benefit level and then returning to the program when income was lower. Thus, the rules provide that terminated households reapplying in the first issuance month in which they are not receiving benefits, and expired households applying in the month following their last month of certification, be certified using retrospective accounting techniques. As a condition of continuing eligibility, the household would be required to submit a completed, signed monthly report for the budget month corresponding to the issuance month of reapplication. Eligibility and benefits would be calculated by the State agency using information reported on the monthly report form. If the household was found ineligible based on this information, but had since experienced a change in circumstances that made it eligible again, the State agency would have the household complete a supplemental request form, calculate eligibility based on this information, and issue a supplemental allotment if appropriate to the household's circumstances. These issuances would be made no later than five working days subsequent to the date an eligible household filed either a completed, signed monthly report or a supplemental benefit request form.

At the time of reapplication, the household would also be expected to complete any other monthly reporting form which had not been filed during the period of termination. The timeframe for issuance of benefits based on this additional report would be dependent upon the filing date of the report but in any case be no later than the schedule of issuance discussed in *State Agency Action on Reports.*

Fair Hearings

Households participating in the MR/RA system would have the same rights to fair hearings and continued benefits as all other food stamp households. Such a household would, however, continue to be required to submit monthly reports. The household's benefits would be recalculated each month, in accordance with the information contained in the monthly report. Any disputed information which served as the basis for the fair hearing request would not be considered by the State agency in calculating benefits until the fair hearing decision had been rendered. For example, if the State agency believes a new household member has been added, yet the household believes the person to be a boarder, household benefits during the fair hearing decision period would be calculated without the new household member. As under normal progam rules, participating households would be liable for any overissuances incurred during the fair hearing period if the decision is in the favor of the State agency.

Recertification

While MR/RA provides State agencies with continuously updated information on which to determine household eligibility and calculate

benefit levels, the concept of discrete certification periods has been maintained in both the law and these proposed regulations. In completing the recertification process, the State agency would maintain personal contact with the household.

As under current program rules, a household reapplying in a timely fashion would be provided with an opportunity to participate by the household's normal benefit issuance date. For the purpose of assuring uninterrupted benefits, a timely reapplication would consist of filing by the normal monthly report filing date either a recertification form, as described in the first option below, or a monthly report form and an addendum as described in the second option. As discussed in *Subsequent Participation* above, the household's eligibility and benefit level would be determined retrospectively. Those States which issue benefits during the month immediately following the budget month would be permitted, with FNS approval, to use information obtained at recertification to determine eligibility and benefits for the second month of the new certification period, rather than the first month. The State agency would be given an option in deciding on the form used to recertify the household. The first option would allow the State agency to mail the household a recertification form and notice of expiration in lieu of the normal monthly report form. The recertification form, which would be designed to obtain all necessary information about the household's circumstances for the budget month, would also be accompanied by a notice explaining the household's rights and responsibilities and the necessity of submitting the form by a specific date to assure receipt of uninterrupted benefits. If the recertification form was submitted by the household, the State agency would then be responsible for interviewing and recertifying the household. The State agency could schedule the interview for any date in the month following the last budget month of the old certification period. However, households interviewed on or before the normal due date for monthly reports would be instructed to bring the recertification form to the interview, rather than mailing the form to the State agency.

Alternatively, the State agency could provide, along with the notice of expiration, both a montly report form and an addendum covering those factors of eligibility not addressed by the monthly report. The same requirements described above relating to State agency processing of the reapplication (including the requirement for recertification interview) would be followed regardless of the form of the reapplication.

Households With Special Circumstances

This section of the proposed regulations addresses how a household with special income circumstances would have such income handled under MR/RA. As a basic principle, the Department has proposed that a household with self-employment income which is received on other than a monthly basis have such income averaged in accordance with the procedures contained in § 273.11(a); households receiving income by contract, in a period shorter than a year, would have such income averaged in accordance with § 273.10(c)(3)(ii); households receiving income from scholarships, deferred educational loans, or other education grants would have such income averaged over the period it was intended to cover.

The results of such averaging would be imputed to the corresponding retrospective budget months by the State agency. The households would not be required to report such averaged income on the monthly report form, as directed by the House Committee Report. Rather, the State agency would take the averaged income and add it on a monthly basis to all other income factors reported by the household.

When such households request supplemental issuances, except in those instances where such requests are based on a significant change in self-employment income, the averaged income amount assigned to the issuance month would be used in determining both eligibility for the supplement and the supplement level. For self-employed households which have suffered a significant decrease in income, the State agency would be required to calculate a new income average in accordance with § 273.11(a); use that average in determining the household's eligibility for a supplement and the supplement level; and replace the existing average with the new average for subsequent retrospective accounting calculations.

As a final provision, the regulations provide that in those instances when households residing in drug addict/alcoholic treatment centers are subject to MR/RA, the center as the authorized representative would be responsible for completion of the monthly reporting form.

For the reasons set out in the preamble, Part 273 of Chapter II of Title 7 of the *Code of Federal Regulations* is proposed to be amended as follows.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. A new § 273.21, *Monthly Reporting/Retrospective Accounting*, is added to read as follows:

§ 273.21 Monthly reporting/retrospective accounting.

(a) *Administration.*

(1) The operation of a monthly reporting/retrospective accounting (MR/RA) system shall be at the option of each State agency. However, prior to the implementation of such a system, each State agency must receive FNS approval. Such approval shall be contingent upon the following conditions being met:

(i) The State demonstrates the ability to manage a MR/RA system effectively;

(ii) The State's proposed system meets the requirements of these regulations;

(iii) A pretest, as described in paragraph (a)(3) of this section is satisfactorily conducted;

(iv) The State agency has added provisions to its operating guidelines describing operational responsibilities and has received FNS approval of the changes; and

(v) The State agency has received FNS approval of all required forms.

(2) Each State agency wishing to operate a MR/RA system shall solicit public input and comment on its proposal to operate a MR/RA system, emphasizing those areas in which the State has some discretion.

(i) Prior to the beginning of the comment period, the State agency shall publicize in the media that its proposal to operate a MR/RA system, the proposed method of operation, and the requirements of the proposed system are open to public comment. State press releases and other methods of publicity shall contain addresses for obtaining further information and shall specify the method used for soliciting public comment. The State shall use one or more of the following methods:

(A) State Administrative Procedures Act (APA) if the Act includes procedures for obtaining public comment on food stamp matters and provides at least 30 days for comment;

(B) Publication (in addition to the notice of the available components) of a summary of MR/RA operational procedures. Also, instructions on how to obtain more information shall be included. This publication shall be in sufficient media sources to ensure general coverage in all affected project areas. In addition, all outreach contacts in the State's current plan shall be notified separately. Public comment

shall be solicited for a minimum of 30 days.

(C) State-wide public hearing(s) at locations that are accessible to a significant number of interested persons.

(ii) State agencies shall review, analyze and consider all comments and prepare a summary of the major comments. The summary shall briefly outline the sources and content of the major comments and explain what was decided upon. Copies of the comments (either letters or transcripts of oral comments) and a comment summary shall be available for public inspection at the State office during its regular business hours. Copies of comment summary shall be made available free of charge upon written request. The comment letters or transcripts and the summary shall be retained for at least one year for both public and FNS review.

(iii) When soliciting comments, special emphasis shall be placed on the State options selected in the MR/RA system.

(iv) State agencies are encouraged to maintain any currently used methods and may also use other methods for obtaining public comment, in addition to the minimum requirements specified above; for example, States with APA's may also hold public hearings, or welfare or food stamp advisor councils may review the material.

(3) After a system has been designed, each State agency shall conduct a pretest of its proposed MR/RA system. The results of the pretest shall be used by the State agency in modifying the system as appropriate and shall be provided to FNS for review and determination of whether the State has met the conditions in paragraph (a)(1) (i) and (ii) of this section. The pretest shall be designed to measure:

(i) Participating households' ability to understand and complete the monthly reporting form;

(ii) Participating households' ability to understand the conditions for qualifying for supplemental assistance and the methods for requesting such assistance; and

(iii) The State agency's ability to process the information contained in the monthly report and issue benefits based on such information.

(4) Unless otherwise specified in this section, all food stamp regulations shall apply to State agencies operating MR/RA systems and households participating in MR/RA.

(b) *Defintions.* (1) "*Adequate Notice*" means a written notice that includes a statement of the action the agency has taken or intends to take; the reasons for the intended action; the household's right to appeal the agency's action or to request a fair hearing; the telephone number and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. Depending on the timing of a State's system and the timeliness of report submission by participating households, such notice may be received prior to agency action, at the time reduced benefits are received, or, if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, however, participants will be allowed ten days from the mailing date of the notice to contest the agency action and have benefits restored to their previous level. If the 10-day period ends on a weekend or a holiday and a request is received the day after the weekend or holiday, the State agency shall consider the request to be timely.

(2) "*Budget Month*" means the fiscal or calendar month used in computing a household's level of benefits.

(3) "*Certification Period*" means the period of time during which a household may receive program benefits. The certification period shall be continuous for all households for a minimum of six months to a maximum of twelve months or until the household voluntarily withdraws, or the household is terminated from the program for failing to meet financial or nonfinancial eligibility requirements or to comply with the reporting requirements of this section, whichever occurs earlier.

(4) "*Issuance Month*" means the fiscal or calendar month during which a State agency issues benefits. In prospective accounting, the budget month and the issuance month are the same. In retrospective accounting, the issuance month follows the budget month and shall begin no later than one month after the end of the budget month.

(5) "*Prospective Accounting*" means that benefits are computed using the best estimate of income and circumstances which will occur in a current or future month.

(6) "*Retrospective Accounting*" means that benefits are computed using actual income and circumstances which existed in a previous month, the "budget month".

(7) "*Supplemental Benefits*" means benefits issued by the State agency in a MR/RA system to maintain the household during the time it takes for the level of benefits to reflect a change in household circumstances or income.

(c) *Included households.* (1) Subject to the restrictions contained in paragraphs (c) (2) and (3) of this section, the State agency may require any household to have its allotment determined restrospectively and to report its circumstances monthly.

(2)(i) The provisions of this section may be implemented State-wide or in particular project areas within a State.

(ii) In those areas where the State agency chooses to implement a MR/RA system, all households of the same type shall either be included or excluded from it. For example, the State agency may choose to implement the system for only AFDC households, for only non-assistance households, or for all households not included in the categories set forth in paragraph (c)(3) of this section.

(3) The following households shall not be covered by MR/RA:

(i) Migrant farmworker households, while they are in the migrant stream;

(ii) Households with a member on strike, which were not certified before the date on which the strike began;

(iii) Households in which all members are either elderly or disabled and none of whom have any nonexcludable earned income;

(iv) Households which the State agency is reasonably certain will be eligible to receive benefits for three months or less; and

(v) Households which require special asistance in order to apply for food stamps if that special assistance will not be available for completing the monthly reports. Special assistance shall include authorized representatives to complete monthly reports, home visists or telephone reporting in lieu of the report form. Such households may be comprised of blind, mentally or physically disabled persons, persons whose reading and writing skills are so limited that they cannot complete monthly reports on their own, or non-English speaking persons residing in project areas where the bilingual requirement of § 272.4(c) do not apply.

(A) The State agency shall screen all applicants subject to MR/RA to identify households that require special assistance.

(B) The State agenacy shall not be required to provide any assistance beyond that required elsewhere by the regulations.

(C) The State agency shall not require a household to obtain its own special assistance for completing monthly report forms as a condition of eligibility.

(d) *Information on system operation.* The State agency shall aprovide households that will be included in MR/

RA the following information at the time of the certification interview:

(1) An oral explanation of the purpose of MR/RA and prospective and retrospective determination of income;

(2) A copy of the monthly report and an explanation of how to complete it and file it;

(3) An explanation of the documentation the household will need to submit to verify all earned income, actual utility or medical expenses if they would result in a deduction; and any other information requiring documentation in accordance with the requirements of § 273.2(f)(9)(ii);

(4) An explanation of the household's entitlement to supplemental benefits, the information that is needed before the State agency can issue supplemental benefits, and the method and timing for issuing supplemental benefits;

(5) A toll free telephone number which the household may call to ask questions or obtain help in completing the monthly report;

(6) Written explanations of the above information.

(e) *Determining eligibility and benefit levels during the initial months.* (1) The State agency shall determine initial household eligibility and benefit levels in accordance with the prospective accounting procedures established in Part 273.

(2) The period of prospective eligibility shall be determined by the State agency based on the requirements for transition to MR/RA established in paragraph (f) of this section. Sufficient information shall be gathered to allow the extension of prospective accounting if necessitated by a delay in application processing.

(3) The State agency shall not issue retroactive benefits for the initial months based on a monthly report which shows a household's earlier anticipation of circumstances to have been inaccurate. The State agency shall neither reduce nor claim benefits for the initial months based on a monthly report unless the State agency erred in computing a household's eligibility or benefit level, or the household failed to provide correct and complete information which was available to it at the time the State agency requested the information.

(f) *Transition to the MR/RA system.* The State agency shall convert participating households to the MR/RA system as soon as the following conditions are met:

(1) The initial budget month is not earlier than the first full month subsequent to the date of application;

(2) The household has received its notice of eligibility;

(3) The State agency has mailed monthly report forms in sufficient time to provide households with a minimum of five days from receiving the forms to the filing due date; and

(4) Submission and processing of the report will not result in a delay in the next regularly scheduled issuance.

(g) *Monthly reporting.* The State agency shall require each household in the MR/RA system to report on household circumstances on a monthly basis as a condition of continuing eligibility. The State agency shall not impose any additional change reporting requirements beyond the monthly report. However, in those instances where a supplemental issuance is to be computed, the household will be required to provide the information necessary to compute the supplement.

(1) *Report distribution and submission.* (i) The State agency shall ensure that each household participating in the MR/RA system receives a monthly report form at about the same date each month.

(ii) The monthly report form shall be mailed to the head of the household in sufficient time to allow the household head at least five days from the date the household receives the form until the filing due date.

(iii) The State agency shall provide a postage paid, return envelope for the monthly report.

(iv) The filing due date for the monthly report shall be no earlier than five days after the end of the budget month.

(2) *Monthly report form.* The State agency shall either use the FNS-designed monthly reporting form or design and obtain FNS approval of its own monthly reporting form. The report form shall meet the following requirements:

(i) Be written in clear, simple language;

(ii) Meet the bilingual requirements described in § 272.4(c). With FNS approval, the State agency may establish a method to include non English-speaking households in areas not subject to the bilingual requirements in the MR/RA system. For example, the form may provide the name and telephone number of a bilingual worker to contact for assistance in form completion;

(iii) Specify the date by which the agency must recieve the form and the consequences of a late or incomplete form, including whether the State agency shall delay payment if the form is not received by the specified date;

(iv) Specify the verification which must be submitted with the form. Such verification will include, at a minimum, documentation of earned income, and actual utility and medical expenses to the extent that they would result in a deduction. Other items requiring verification may be requested by the State agency in accordance with the conditions established in § 273.2(f)(9)(ii);

(v) Identify the individual or agency unit that the household can contact to receive prompt answers related to questions on form completion. A telephone number, toll-free for households beyond the local calling area, shall also be included;

(vi) Include a statement, to be signed by the head of the household, indicating his or her understanding that the informnation provided may result in changes in the level of benefits, including reduction and termination;

(vii) Advise the household of the availability of supplemental benefits and the procedures for obtaining them;

(viii) Advise the household of its right to appeal an agency action, to request a fair hearing based on any decrease or termination of benefits or denial of supplemental benefits, or to file a complete, signed monthly report for reinstatement;

(ix) Include, in prominent and boldface lettering, an understandable description of the Act's civil and criminal penalties for fraud;

(x) Request the following information:

(A) Household name and address;

(B) Household composition as of the last day of the budget month;

(C) Nonexcludable unearned and earned income information, including income from self-employment that is not averaged, and infrequent or irregular income. Averaged income shall not be reported;

(D) Shelter costs. However, if a State agency's computer system is able to retain and use fixed shelter costs in its monthly computations the State agency may not require such costs to be reported monthly;

(E) Medical costs over $35 a month for elderly or disabled household members;

(F) Dependent care costs;

(G) Liquid resources exceeding $1500; and

(H) Acquisition of an automobile, including its make and year.

(xi) Request no other information, except that, if the form is a joint AFDC/FS monthly report form, other information necessary to determine AFDC eligibility may also be included if it is clearly indicated that non-AFDC food stamp households need not provide such information.

(h) *State agency action on reports.* (1) *Processing.* Following the due date for receipt of the monthly report, the State

agency shall be responsible for taking the following actions:

(i) Reviewing the report to ensure there receipt, accuracy and completeness. The State agency shall consider a monthly report incomplete for food stamp purposes only if it is unsigned by the household head, is not accompanied by verification of reported earned income, or omits information necessary to either determine the household's food stamp eligibility or to compute the household's level of food stamp benefits.

(ii) Determining those items on the report which will require additional verification or information from the household.

(A) Items requiring additional verification shall include undocumented earned income, or utility or medical expenses which, if verified, would result in a deduction. The household shall also be required to submit documentation to support changes of more than $25 in unearned income if such documentation is not available to the State agency. The household shall also be required to submit other documentation if required by the State agency in accordance with § 273.2(f)(9)(ii), except for medical expenses.

(B) The State agency shall require verification of the household's medical expenses either monthly or only when the total medical expenses change by more than $25 from the previous month.

(C) Items requiring personal contact with the household might include such things as applicability of the work registration requirement or the addition of a new household member.

(iii) Contacting the household directly, as needed, to obtain further information on specific items.

(iv) Notifying the household, in accordance with paragraph (h)(2)(iii) of this section of the need to submit the report, correct an incomplete or inaccurate report, or submit the necessary verification within the extension period.

(A) In the event that the household has not supplied verification of its earned income or submitted its monthly report by the end of the extension period, the State agency shall take action to terminate the household in accordance with paragraph (h)(2)(v) and (vi) of this section.

(B) If the household has failed to provide verification of utility expenses by the end of the extension period, the State agency shall allow the utility standard if the household is entitled to the standard.

(C) If the household has failed to supply verification of medical expenses by the end of the extension period, no deduction shall be allowed.

(D) If the household has failed to provide documentation of other items required to be verified in accordance with § 273.2(f)(9)(ii) the State agency shall take one of the following actions. If this change would result in a decrease in benefits, the State agency shall act on the change in determining the household's eligibility and benefit level. If the change would result in an increase in household benefits, the State agency shall take no action on the change until verification is received.

(v) Determining household eligibility by considering all factors, including income, retrosepectively, i.e., from the corresponding budget month:

(vi) Determining the household's level of benefits. Benefit levels shall be calculated in accordance with the procedures set forth in § 273.10(e) but shall be based on:

(A) Earned and unearned income received or that has been averaged for the corresponding budget month. The State agency has the option of converting to a regular monthly amount the income of households that earn income weekly or biweekly;

(B) Deductions as billed or averaged from the corresponding budget month, including those shelter costs billed less often than monthly which the household has chosen to average; and

(C) Household composition as of the last day of the budget month.

(vii) Issuing benefits in accordance with Part 274 on the time schedule set forth in paragraph (h)(3) of this section. Specific information on how benefit levels were calculated shall be provided with the issuance or in a separate notification.

(2) *Notices.* (i) All notices regarding changes in household's benefits shall meet the definition of adequate notice as defined in paragraph (b)(1) of this section.

(ii) When the State agency receives a complete and signed monthly report by the date specified, the agency shall determine the household's eligibility and benefit level. The State agency shall also provide the household with adequate notice of any changes from the prior benefit level and the basis for its determination. If the benefits are being reduced or terminated, the notice must be received by the household no later than either the date the resulting benefits are to be received or in lieu of the benefits.

(iii) If a complete and signed report is not received by the specified filing date, the State agency shall send an adequate notice to the head of the household within five days of the filing due date. The notice shall inform the household head that the monthly report is either overdue or incomplete, what action is needed to complete the form, and that he or she has 10 additional days to file a complete and signed report prior to the initiation of termination action. The State agency has the option of giving households more than 10 additional days for filing complete reports provided that the due date allows the State agency sufficient time to process the report and issue benefits before the 45th day following the end of the budget month. The notice shall also offer the State agency's assistance in completing an incomplete report.

(iv) If a complete and signed monthly status report is received within the extension period, benefits need not be issued by the normal payment date. Such benefits shall be issued, however, no later than the dates specified in paragraph (h)(3) of this section.

(v) The State agency may terminate the household's benefits if it has not received a complete and signed report by the end of the extension period.

(vi) If the State agency's policy is to terminate a household's benefits if a complete and signed report is not received at the end of the extension period, the State shall send a notice of termination to the household. The notice of termination shall meet the definition of adequate notice as defined in paragraph (b)(1) of this section and inform the household of its possible reinstatement if the report is completed or filed.

(vii) The termination notice should reach the household at least 10 days before the expected issuance of benefits. However, if due to the issuance schedule or the filing date of the report this is not possible, the termination notice must reach the household on or before the extended payment date.

(3) *Benefit Issuance.* (i) The State agency shall, within 30 days of the end of the budget month, provide all eligible households who file signed and complete monthly reports by the scheduled filing date with an opportunity to participate, unless FNS determines that a longer issuance period is necessary. FNS may approve a longer issuance schedule for reasons such as coordination with an AFDC system or the staggered issuance of ATPs for security reasons. In no instance, however, shall the State agency extend the issuance period beyond 45 days following the end of the budget month.

(ii) For eligible households which file a signed and complete monthly report during the extension period, benefits shall be issued no later than 10 days after the normal issuance date, but in no

event later than the 45th day following the end of the budget month.

(iii) Eligible households filing a complete and signed report subsequent to the extension period but prior to the end of the issuance month shall be provided an opportunity to participate no later than the extended issuance date or 10 days following receipt of the signed, complete report, whichever is later.

(iv) In no event shall a State agency reduce, terminate or suspend a household's benefits on the basis of a monthly report earlier than the appropriate issuance month.

(4) *Suspensions.* Each State agency operating a MR/RA system shall develop a procedure which will ensure that households losing their eligibility due to a temporary increase in net income are quickly brought back into the system. If, for example, a household experiences a $100 increase in income in January, making it ineligible for March benefits, the system must be able to respond to a request for a supplemental issuance in March due to a return to the normal income level.

(i) When households lose eligibility due to an increase in net income which is subject to further change, the State agency shall continue to supply such households with monthly reports for a minimum of one additional month. Households that are eligible based on the subsequent month's circumstances shall be issued benefits on their normal issuance cycle.

(ii) The State agency's system shall be structured to provide timely supplemental benefits to those households that became eligible and file a request for supplemental benefits during the initial month of ineligibility.

(5) *Conversion.* In those States where FS/AFDC households are subject to MR/RA, but some other categories of households are not subject to MR/RA, the State agency shall establish procedures to ensure the smooth transition of households from one system to the other.

(i) If the household's AFDC eligibility is terminated due to a change in a factor which affects only AFDC eligibility, the State agency shall continue to issue food stamp benefits, if the household is otherwise eligible, on a retrospective basis for one additional month. At the time the termination notice related to the AFDC payment is issued, the State agency shall also issuing a notice of expiration regarding food stamp benefits. Such notice shall be issued in time to ensure that the household will have a sufficient time to timely apply for recertification.

(ii) The State agency shall have the option of continuing to issue food stamp benefits, if the household is otherwise eligible, on a retrospective basis for a second additional month in those cases where AFDC eligibility is likely to be reinstated, such as where earned income or household composition is likely to change again.

(6) *Termination.* The State agency shall take action to terminate those households who fail to file a monthly report, fail to file a complete report, or fail to comply with a non-financial eligibility requirement, such as registering for employment. As discussed in paragraph (g)(2)(vi) of this section, the monthly report shall inform households of their potential termination for failure to file a complete, signed report. The initial notice of failure to file a complete, signed report shall continue a similar message. The notice issued after the extension period shall state the reason for the termination, explain what the household needs to do to be reinstated, and advice the household of its right to a fair hearing and its right to receive continued benefits if it requests a fair hearing within ten days.

(i) *Supplemental Benefits.* The State agency shall be responsible for providing supplemental benefits to those households which experience a significant change in household circumstances.

(1) Once the State agency has begun issuing benefits to a household based on retrospective iformation, the household is eligible to receive supplemental benefits if:

(i) The households's gross income during the issuance month is $50 lower than the gross income received in the corresponding budget month;

(ii) The household's net income during the issuance month is $50 lower than the net income in the corresponding budget month; or

(iii) The household size in the issuance month is larger than the household's size in the corresponding budget month due to the addition of one or more household members who are not members of another certified household.

(2) A household reapplying in its initial month of ineligibility shall be entitled to supplemental benefits if it is determined to be eligible and meets the conditions of paragraph (i)(1) (i), (ii), (iii), or (iv) of this section.

(3) In determining a household's entitlement to supplemental benefits and in calculating the amount of supplemental benefits, the State agency shall apply the same definitions of income, deductible expenses, and household size as would be used in calculating prospective eligibility or benefit levels. The State agency shall base the household's income and deductions on circumstances in existence at the time the State agency becomes aware of the change and on a reasonable anticipation of the household's circumstances for the remainder of the issuance month. For example, if a household has requested both AFDC and food stamp supplemental benefits and the AFDC supplement can be reasonably expected to be received during the issuance month, it would be included in income calculations.

(4) The amount of supplemental benefits shall be determined by calculating the household's entitlement for the issuance month using prospective accounting procedures, and subtracting from this amount the benefits received or scheduled to be received during the issuance month. Any food stamp claims or retroactive benefits received shall be disregarded in such calulation.

(5) Households should request supplemental benefits in writing using the FNS-designed form or a form designed by the State agency and approved by FNS. However, if the State agency becomes aware from a source outside the MR/RA system of a change in household circumstances which would result in a supplemental issuance, the State agency shall be responsible for informing the household of its potential eligibility to receive supplemental benefits and of the information the household must provide in order that the amount of supplemental benefits can be computed.

(6) The supplemental benefit request form shall be a simple, easily understood form which will allow the household to describe its reason for requesting supplemental benefits and its current month's circumstances. The State agency shall have the option of designing a form requesting prospective data for two months for those instances when the circumstances necessitating supplemental benefits are expected to extend beyond the month in which the charnge is reported. In all circumstances in which the State agency does not exercise this option, a separate supplemental benefit request shall be made for each month that supplemental benefits are desired.

(7) The State agency shall provide each participating household with at least two supplemental benefit request forms at the time of certification, and shall:

(i) Send the household a blank form each time supplemental benefits are provided or denied; or

(ii) Provide the household with a supplemental benefit request form as an enclusure to the monthly report form; or

(iii) Provide the household with a supplemental benefit request form no later than the date the monthly allotment and benefit explanation sheet are provided.

(8) A household shall be permitted to file a supplemental benefit request form with the State agency on the same day that it expresses interest in requesting supplemental benefits.

(9) The State agency shall have five working days from receipt of the supplemental benefit request form to issue eligible households either an ATP or coupon allotment.

(10) The State agency shall make every effort to ensure that the household submits the verification required in accordance with s273.2(f)(9)(ii) within the five working-day issuance standard. However, benefits for the first supplemental issuance month shall not be delayed beyond the five-day issuance standard due to the lace of verification. No other increased benefits (supplemental or regular allotment) based on the same change in circumstances will be provided until the required verification is submitted.

(11) The State agency shall not issue supplemental benefits based on a one-time change unless the change is reported in the month in which it occurs. For example, if a household experiences a $55 decrease in gross income in January but returns to its previous income level in February, the household would not be issued supplemental benefits if the decrease in January income was not reported until February.

(12) The supplemental benefit or denial thereof shall be accompanied by a benefit explanation sheet. The benefit explanation sheet shall inform the household of:

(i) The disposition of its request for supplemental benefits;

(ii) How the supplemental benefit was calculated; and

(iii) The household's right to a fair hearing if it disagrees with the disposition of the request or the amount of the supplemental benefit.

(j) *Action on information from sources other than the reporting system.* (1) Upon receipt of any information affecting eligibility or benefits, the State agency shall determine whether a household is entitled to supplemental benefits and issue them in accordance with paragraph (i) of this section.

(2) In the event a household reports information which alters a monthly report, the State agency shall adjust the allotment for the appropriate issuance month, if possible, or prepare a claim, if appropriate.

(3) If the State agency receives information from someone other than a household member which would result in decreased benefits, the State agency shall take no action until the appropriate monthly report, covering the period of the alleged change, is received. If the reported information does not appear on the monthly report, the State agency may consider the monthly report questionable and obtain verification from the household.

(i) If the household confirms the change, the State agency shall either prepare a claim, if benefits have already been issued for the appropriate budget month, or adjust the benefit level for the appropriate future issuance month.

(ii) If the household does not confirm the change yet the State agency believes the change has occurred, the State agency shall issue a notice of adverse action in accordance with s273.13. No further action shall be taken on the change until the 10 day notice period has expired.

(k) *Subsequent participation.* (1) Households reapplying in the month following the last month of certification, or terminated households reapplying during the issuance month following the last month in which they received benefits, shall have their eligibility and benefit level determined in accordance with the procedures established by the State agency in accordance with paragraph (h)(1)(iv) and (v) of this section.

(2) The determination of eligibility and benefit level shall be based on information in a monthly report that the household shall complete for the budget month which corresponds to the appropriate issuance month.

(3) If the household is ineligible based on the information contained in the monthly report, the State agency shall determine if the household is eligible to receive supplemental benefits based on circumstances in the issuance month.

(4) If the household is determined to be eligible to receive benefits under the conditions established in either paragraph (k)(2) or (3) of this section, the State agency shall provide such households with an opportunity to participate no later than 5 working days from the date the complete, signed monthly report or the request for supplemental benefits is filed. Eligibility for subsequent month's allotments shall be contingent upon the filing of complete, signed reports for the corresponding budget months.

(l) *Fair hearings.* (1) Households participating in a MR/RA system shall be entitled to fair hearings in accordance s273.15.

(2) Any household which requests a fair hearing and does not waive continuation of benefits shall have its benefits continued until the end of the certification period or the resolution of the fair hearing, whichever is first.

(3) During the fair hearing period the State agency shall adjust regular and supplemental issuances to take into account reported changes, except for the factor(s) on which the fair hearing is based.

(m) *Recertification.* (1) State agencies shall recertify an eligible household which timely reapplies and provide it with an opportunity to participate by the household's normal issuance cycle.

(2) The State agency shall recertify the household retrospectively, using the corresponding budget month for the first month of the new certification period in determining household eligibility and benefit level. However, where necessary because States issue benefits quickly and FNS approval has been obtained, information from the recertification interview may be reflected in the eligibility and benefits of the eligibility and benefits of the second month of the new certification period.

(3) The State agency shall recertify households according to one of the following options:

(i) *Recertification form.* The State agency shall provide each household with a recertification form to obtain all necessary information about the household's circumstances for the budget month.

(A) The State agency shall mail the form to the household along with a notice of the expiration, in place of the monthly report form.

(B) The household shall submit the form to the State agency in accordance with paragraph (g)(1)(iv) of this section.

(ii) *Monthly report and addendum.* The State agency shall provide each household with a monthly report form and an addendum to obtain all additional information necessary for recertification.

(A) The State agency shall mail the monthly report form to the household along with the notice of expiration in accordance with paragraph (g)(1)(iii) of this section.

(B) The household shall submit the monthly report to the State agency in accordance with paragraph (g)(1)(iv) of this section.

(C) The State agency shall deliver the recertification addendum to the household along with the monthly report form or obtain the necessary information from the household at the interview.

(D) The household shall submit the addendum to the State agency no later than the time of the interview.

(4) Households which submit a recertification form on a monthly report and addendum by the normal filing due date shall be considered to have timely reapplied and shall not have any interruption in benefits. Other State action on timely reapplication, proper handling in the event the State agency fails to act on a timely reapplication or the household fails to submit a timely reapplication, and the definition of good cause for failure to timely reapply shall be in accordance with § 273.12(c), (d), (e), and (f) of these regulations.

(5)(i) The State agency shall conduct a complete interview with a household member or an authorized representative.

(ii) The State agency may schedule the interview at anytime during the month after the end of the last budget month of the old certification period. However, if the interview is scheduled for a date on or before the normal filing due date of the monthly report, the State agency shall permit the household member and authorized representative to bring the recertification form or monthly report addendum to the interview.

(n) *Households with special circumstances.* (1) Households receiving self-employment income on other than a monthly basis, such as farmers, shall have such income averaged in accordance with § 273.11(a).

(i) In the initial month(s), household eligibility and benefits levels shall be determined in accordance with prospective procedures as discussed in paragraph (e) of this section.

(ii) After the initial month(s), household eligibility and benefit levels shall be determined by normal retrospective budgeting methods with the exception that the averaged income amount shall be used in lieu of actual income received from the self-employment enterprise.

(iii) Households requesting supplemental benefits based on a change in household size or a change in deductible expenses or a change in income, other than self-employment income which has had no substantial decrease in income, shall have the amount of supplemental benefits calculated using the averaged income amount assigned to the issuance month, in addition to all other factors. If, however, the self-employment enterprise has experienced a substantial decrease in income, the average shall be recalculated based on anticipated earnings. The old income average shall be compared to the new averaged in determining if a supplemental issuance is appropriate. In addition, the new income average shall be used in determining the household's benefit level for subsequent months.

(2) Households which receive income by contract in a period of less than a year shall have such income averaged in accordance with the procedures discussed in § 273.10(c)(3)(ii).

(i) In the initial month(s) household eligibility and benefit level shall be determined in accordance with prospective procedures as discussed in paragraph (e) of this section.

(ii) After the initial month(s), household eligibility and benefit levels shall be determined by normal retrospective budgeting methods with the exception that the averaged contract income amount shall be used in lieu of actual contract payments.

(iii) Households requesting a supplemental issuance shall have their eligibility for supplemental benefits calculated using the averaged contract income amount assigned to the issuance month.

(3) Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it was provided.

(i) In the initial month(s), household eligibility shall be determined in accordance with prospective procedures discussed in paragraph (e) of this section.

(ii) After the initial month(s), household eligibility and benefit levels shall be determined by normal retrospective budgeting methods with the exception that the averaged educational payment, once received, shall be included as unearned income during the months it is intended to cover.

(iii) Households requesting supplemental benefits shall have their request evaluated based on the averaged income assigned to the issuance month in addition to all other factors.

(4) Drug addict/alcoholic treatment centers shall be responsible for completing and filing monthly reports for residents who are subject to MR/RA.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalogue of Federal Domestic Programs No. 10.551, Food Stamps)

Dated: December 1, 1980.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 80-37745 Filed 12-4-80; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF AGRICULTURE

7 CFR Part 282

[Amdt. No. 185]

Food Stamp Program; Monthly Reporting/Retrospective Accounting Demonstration Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth procedures for conducting a demonstration project under the Food Stamp Program using monthly reporting and retrospective accounting (MR/RA) in determining participating households' continuing eligibility and benefit levels. The demonstration project will test the impact of monthly reporting and retrospective accounting on administrative procedures, benefit levels, error rates and client services. Project operations are scheduled to commence on or about the beginning of January 1981, and will last for approximately eighteen months. The project will be conducted in two sites: Peoria County and the Southeast local office of Cook County, Illinois. MR/RA is intended to help States to reduce error rates by using verifiable data instead of data developed through estimates and projections.

DATE: Comments should be received on or before December 22, 1980 to be assured of consideration.

ADDRESS: Comments should be submitted to: Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250. All written comments will be open to public inspection at the office of the Food and Nutrition Service, USDA, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street S.W., Washington, D.C., Room 678.

FOR FURTHER INFORMATION CONTACT: Marilyn Carpenter, Chief, Program Research and Analysis Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250; telephone: 202–447–8332. 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 the above named individual.

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."

Robert Greenstein, Administrator, Food and Nutrition Service, has determined that a situation exists which warrants a public comment period of less than sixty days. This shortened comment period is necessary to permit concurrent implementation of monthly reporting/retrospective accounting for both the Food Stamp and Aid to Families with Dependent Children (AFDC) Programs in the demonstration project sites. Concurrent implementation of this joint USDA/HHS project is necessary to assure a methodologically sound analyses of the results of the demonstration. The HHS component of the joint project will also be implemented in January. It should be noted, that the Illinois State agency has discussed the operation of the demonstration project with Legal Aid groups in both Peoria and Cook Counties. In addition, letters have been sent to 20 groups representing participants in Peoria, and a general orientation session has been scheduled for early December. Plans are being made to contact similiar groups in Cook County, and a general orientation session is scheduled to take place there the first part of February.

The concept of monthly reporting and retrospective accounting has long been of interest to those concerned with the administration of both the Food Stamp Program and the Aid to Families with Dependent Children (AFDC) Program. Initial findings coming from an experimental project conducted in Colorado by the United States Department of Health and Human Services (HHS) indicated that such a system led to some reduction in payment costs and could produce a higher degree of accuracy in determining household assistance needs than was afforded through prospective accounting techniques. Based on these findings, HHS decided to undertake a series of demonstration projects to learn more about the effects that a monthly reporting/retrospective accounting (MR/RA) system has on program costs, administration, error rates, and client needs. While USDA was also interested in testing the effects of such a system on Food Stamp Program operations, there was no authority to conduct demonstration projects until regulations implementing Section 17(b) of the 1977 Food Stamp Act (P.L. 95–113) were published in September 1978.

After these regulations were issued, the Department began a series of conversations with both HHS and those State agencies which were project operators for the HHS MR/RA Demonstration Project. As a result of these conversations and the Department's continuing interest in the applicability of a MR/RA system to Food Stamp Program operations, the Department initiated two actions. First, the Administration's 1979 legislative proposals contained a provision which would have allowed States, at their option, to use a MR/RA system to determine household eligibility and benefit levels. This optional system was intended to provide administrative relief to those States who had implemented a MR/RA system for AFDC purposes, and to allow States to attempt to reduce food stamp error rates through MR/RA.

Second, the Department decided to undertake a demonstration project which would determine the effect that a MR/RA system had on Food Stamp Program administration and operations. While it was acknowledged that the HHS demonstration projects in this area would provide us with some information, it was also recognized that fundamental program differences would obscure our ability to relate such information directly to the Food Stamp Program.

The decision to undertake such a demonstration project was accompanied by the decision to use as a project grantee one of those States chosen by HHS to participate in their demonstration project. The decision was made with the knowledge that in most instances a MR/RA system must be supported by a sophisticated computer system. Since we believed that there was not sufficient time to acquire such computer equipment and design and prepare such a system for operations, our choices were narrowed to those States which had already accomplished much of the preliminary system design work. Michigan, Massachusetts, Illinois and Vermont all submitted unsolicited proposals which would have included the food stamp component in an upcoming AFDC MR/RA system. Although each State's proposal added to our knowledge about MR/RA, it was determined that the Illinois' proposal best suited the operational and evaluation goals of the Department. Hence, in September 1979, the Department and HHS entered into a joint grant agreement with the Illinois Department of Public Aid.

Since the time of the grant award, personnel from the Department, HHS, and Illinois have worked closely together on the design of both project operations and evaluation. That cooperation has produced a contract for the independent evaluation of the system's effects and contributed to the proposed regulations discussed in § 273.21 in this edition of the **Federal Register.**

These proposed rules would implement the proposed rules of § 273.21 for the purpose of permitting the demonstration project to begin on or about January 1, 1981, when the first monthly reports are scheduled to be mailed to participating households in Peoria County.

It should be noted that only one change has been made from the proposed rulemaking implementing the optional MR/RA system requirements. Fifty percent of the households selected to participate in the demonstration project would be assigned an open-ended certification period. While the State agency would contact such households on a continuing basis when the need arose, no standard certification period would be set. This variant in the experimental design is intended to provide data on the need for regularly schedule recertification interviews. The theory to be tested in this "sub-experiment" is that monthly reporting with ongoing caseworker contacts eliminates the need for specific certification periods. The hypothesis would then be that, in a MR/RA system, there is no significant difference in the error rates of cases which have scheduled recertification dates and cases which do not have scheduled recertification dates and that any difference in error rates that does occur is due only to chance.

Participants in the demonstration project will be limited to food stamp households headed by an AFDC caretaker relative. In Peoria County, which will serve as the basic administrative test site of the project, all such households will be converted to the MR/RA system. In the Southeast local office of Cook County, which will serve as the control/experimental site, such households will be randomly divided into participating/nonparticipating MR/RA households. In both sites, households selected to participate in the demonstration project will be informed both orally and in writing of the project's operations and their roles, rights and responsibilities.

For purposes of monitoring and evaluation, the State agency has agreed to maintain those records and reports required by the Department and the contractor which will be used for project evaluation. Such records and reports shall be maintained by the State Agency for three years from the date of submission of the final project expenditure report. Since the MR/RA

project involves significantly different treatment of elements of eligibility, FNS has determined that error rates attributable to the project will not be included in the State's overall error rate. To accomplish this, the State will select and review the quality control sample using normal procedures. The results of such reviews, however, will be reported to FNS separately and FNS will not include them in determining the State's cumulative allotment error rate.

For evaluation purposes, however, the State agency will be expected to draw a separate quality control sample from MR/RA cases. Errors discovered through this separate review will require corrective action similar to ongoing case reviews.

For the reasons set out in the preamble, it is proposed to amend Part 282 of Chapter II of Title 7 of the *Code of Federal Regulations* as follows:

PART 282—DEMONSTRATION, RESEARCH AND EVALUATION PROJECTS

1. In Part 282, § 282.14 is added to read as follows:

§ 282.14 Monthly reporting/retrospective accounting demonstration project.

(a) *Purpose.* These regulations establish procedures under which a demonstration project, hereafter referred to as the Monthly Reporting/Retrospective Accounting (MR/RA) Project, will operate. Under this project, participating households will be required to submit a monthly report as a condition of continuing eligibility. Benefit levels will be computed using prior month information.

(b) *Method.* While current legislation provides States with the option of using a MR/RA system to determine household eligibility and benefit levels, the Department is undertaking the MR/RA project to determine the effects that the system will have on staff utilization, participation rates, quality control error rates, and client services. These effects will be determined through a systematic evaluation of project administration and results as determined by an independent contractor.

(c) *Statutory requirements to be waived.* Subsection 17(b)(1) of the Food Stamp Act authorizes the Secretary to waive any requirement of the Act necessary to conduct a demonstration project, as long as the project does not lower or further restrict the income or resource standards or benefit levels of project participants. For the purposes of the MR/RA project, the following requirements of the Act shall be waived. Other requirements shall be waived as the Secretary deems necessary, consistent with the limitations on the waiver authority provided under Section 17(b)(1). Such waivers, if necessary, shall be published in the **Federal Register.**

(1) Section 5(b) *Uniform Standards.* The requirement for uniform standards shall be waived to the extent necessary to allow the MR/RA project to operate.

(2) Section 3(c) *Certification Period.* For fifty percent of the households selected to participate in the MR/RA project, the certification period will be continuous rather than for a maximum of twelve months.

(d) *Regulatory Requirements.* (1) Procedures and requirements contained in proposed regulations found at s273.21, except as noted below, shall be in effect for the purpose of this project.

(i) s273.21(b)(3) *Certification Period.* The certification period for 50 percent of the households selected to participate in the MR/RA project shall be continuous until such time as the household voluntarily withdraws, or the household is terminated from the program for failing to meet financial or non-financial eligibility requirements or to comply with the reporting requirements of s273.21, whichever occurs earlier.

(ii) 273.21(m) *Recertification.* For those fifty percent of participating households subject to continuous certification periods, s273.21(m) shall be waived in its entirety. Such households shall continue to be subject to interim household reviews as case conditions warrant, i.e., edit problems, recalculation of average income for households with special income circumstances, or fulfillment of the work registration requirement.

(e) *Areas of Operation.* The MR/RA project will be conducted in Peoria and Cook Counties, Illinios. In Peoria, all food stamp households headed by an AFDC caretaker relative will be included in the experiment. This universe will provide the necessary basis for testing the administrative feasibility of the system. In the Southeast local office of Cook County, food stamp households headed by an AFDC caretaker relative will be randomly divided into an experimental group and a control group. Such caseload division will facilitate a comparative analysis of cases within the project site. In neither office will AFDC foster care cases be included. It is anticipated that the project will be initiated in Peoria with the mailing of monthly reports on or about the first of January 1981. The Cook County system will be initiated approximately three months later than the Peoria schedule.

(f) *Records and Reports.* The State agency shall maintain all records related to project operations for a period of three years from the date of submission of the final project expenditure report, or longer if required in writing by FNS. Such records shall be available to FNS or its designee upon request.

(g) *Monitoring and Evaluation.* FNS will establish procedures for monitoring State agency compliance with the requirements of § 282.14. The evaluation of the project will be conducted by an independent contractor. The State agency shall, upon reasonable notification, provide the evaluation contractor with access to all information pertaining to project operations.

(h) *Quality Control.* The State agency shall review MR/RA cases selected for the quality control sample in accordance with normal review procedures. The results of such reviews will be reported separately to FNS and will not be included in the State's cumulative allotment error rate. For the purpose of project evaluation, FNS will require the State agency to draw a separate quality control sample from households assigned to the MR/RA project. The State agency shall be required to initiate corrective action to eliminate errors from those cases participating in the MR/RA project.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalogue of Federal Domestic Programs No. 10.551, Food Stamps)

Dated: December 1, 1980.

Carol Tucker Foreman,

Assistant Secretary.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of **Rules Going Into Effect Today.**

List of Public Laws

Last Listing December 4, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.R. 39 / Pub. L. 96–487 Alaska National Interest Lands Conservation Act (Dec. 2, 1980; 94 Stat. 2371) Price $4.50.

H.R. 8329 / Pub. L. 96–488 To allow the obsolete aircraft carrier United States ship Intrepid to be transferred to the Intrepid Museum Foundation, Incorporated, before the expiration of the otherwise applicable sixty-day congressional review period (Dec. 2, 1980; 94 Stat. 2552) Price $1.

S. 43 / Pub. L. 96–489 To promote safety and health in skiing and other outdoor winter recreational activities (Dec. 2, 1980; 94 Stat. 2553) Price $1.

H.R. 7942 / Pub. L. 96–490 To approve and implement the protocol to the trade agreement relating to customs valuation, and for other purposes (Dec. 2, 1980; 94 Stat. 2556) Price $1.

S. 1135 / Pub. L. 96–491 To provide for certain lands to be held in trust for the Moapa Band of Paiutes and to be considered to be part of the Moapa Indian Reservation (Dec. 2, 1980; 94 Stat. 2561) Price $1.

H.R. 8112 / Pub. L. 96–492 To require the Secretary of the Interior to convey a parcel of land located in Colorado and certain mineral interests to the Ute Mountain Ute Tribe and to pay an amount to such tribe for energy development (Dec. 2, 1980; 94 Stat. 2565) Price $1.

S. 2251 / Pub. L. 96–493 Gasohol Competition Act of 1980 (Dec. 2, 1980; 94 Stat. 2568) Price $1.

H.R. 3765 / Pub. L. 96–494 Agricultural Act of 1980 (Dec. 3, 1980; 94 Stat. 2570) Price $1.25.

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