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BOOK 1:
Pages
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federal register

Book 1 of 2 Books
Wednesday, December 24, 1980

Highlights

84997 **Special Events** Interior/NPS publishes request for comments amending demonstrations and special events in Washington, D.C. and its environs regarding the inauguration; effective 12–24–80, comments by 1–23–81

85082 **Handicapped** ED proposes regulations regarding nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal Financial Assistance; Comments by 2–9–81

84967 **Fuel** DOE/ERA publishes final rule regarding calculation for cost of using alternate fuels; effective 1–23–81

85160 **Medicare** HHS/Sec'y announces Medicare's monthly hospital insurance premium for the uninsured aged for the 12 months beginning 7–1–81; effective 7–1–81

85161 **Medicare** HHS/Sec'y announces monthly actuarial rates for aged and disabled enrollees in Medicare Supplementary Medical Insurance program; effective 7–1–81

85144, 85145 **Grant Programs—Education** ED invites applications for grants under the College Library Resources Program, Library Career Training Program, and Strengthening Research Library Resources Program (3 documents)

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Highlights

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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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.

84967 **Nuclear Material** NRC publishes confirmation of 12–24–80 effective date regarding implementation of the United States/International Atomic Energy Agency Application of Safeguards Agreement

85052 **Improving Government Regulations** NCUA publishes semi-annual agenda of regulations; effective 12–5–80

84998 **Grant Programs—Clean Water** EPA issues class deviation for construction of treatment works grants; effective 12–16–80

84953 **Courts** Administrative Conference of the United States publishes regulations regarding recommendation on the "Race to the Courthouse"

85077 **Income Tax** Treasury/IRS proposes regulations relating to deferred compensation plans maintained by State and local governments and rural electric cooperatives; comments by 2–23–81

85400 **Clean Air** EPA publishes regulations regarding fair and consistent application of rules, regulations and policy throughout the country by assuring that the actions of each individual EPA Regional Office is consistent with one another and national policy; effective 2–23–81 (Part IX of this issue)

85084 **Improving Government Regulations** EPA agenda of regulations postponed until January 1981

85048 **Banks** FHLBB amends proposed regulation governing service corporation investments of Federal associations; comments by 2–15–81

85422, 85430 **Education** ED amends regulations regarding Library Career Training Program and revises regulations regarding the Strengthening Research Library Resources Program (2 documents)

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85232 NCUA
85256 Panama Canal Commission

85244 **Sunshine Act Meetings**

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 302

Committees of the Administrative Conference; Amendment of Bylaws

AGENCY: Administrative Conference of the United States.

ACTION: Final rule.

SUMMARY: The Conference amends a portion of its bylaws to revise the list of standing committees of the Conference.

DATES: Adopted and effective December 11, 1980.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, Executive Secretary of the Administrative Conference, 2120 L Street, NW., Washington, D.C. 20037 (202/254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvement to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States.

The Act empowers the Assembly of the Conference to adopt bylaws and regulations for carrying out the functions of the Conference, including the creation of such committees as it considers necessary for the conduct of studies and the development of proposed recommendations. At its Twenty-Second Plenary Session, the Assembly adopted an amendment to Section 3 of the Conference bylaws to revise the structure of its nine standing committees. This amendment establishes a new Committee on Interagency Coordination to replace the former Committee on Compliance and Enforcement Proceedings; establishes a new Committee on Regulation of Business by merging the former Ratemaking and Economic Regulation Committee and the Licenses and Authorizations Committee into a single entity; and splits the former Committee on Rulemaking and Public Information into two entities, a Committee on Rulemaking, and a separate Committee on Public Access and Information. Under other provisions of Section 3, which remain unchanged, the committees' titles do not act as jurisdictional limitations, and the Chairman of the Conference retains authority to redefine committee responsibilities and to make project assignments as he or she sees fit. The purpose of this amendment is to provide a sharper focus and more consistent theme for each committee's work, thus improving the quality of committee deliberation and stimulating the interest and participation of the members.

Accordingly, the first sentence of Section 3 of the Bylaws of the Administrative Conference (1 CFR 302.3) is amended to read as follows:

§ 302.3 Committees.

The Conference shall have the following standing committees:

1. Committee on Agency Decisional Processes;
2. Committee on Agency Organization and Personnel;
3. Committee on Grants, Benefits, and Contracts;
4. Committee on Informal Action;
5. Committee on Interagency Coordination;
6. Committee on Judicial Review;
7. Committee on Public Access and Information;
8. Committee on Regulation of Business; and
9. Committee on Rulemaking.

Dated: December 18, 1980.

Richard K. Berg,

Executive Secretary.

[FR Doc. 80-40074 Filed 12-23-80; 8:45 am]

BILLING CODE 6110-01-M

1 CFR Part 305

Recommendation on the "Race to the Courthouse"

AGENCY: Administrative Conference of the United States.

ACTION: Recommendation.

SUMMARY: The Conference issues Recommendation No. 80–5 to eliminate or simplify the "race to the courthouse" in appeals from agency action.

DATES: This recommendation was adopted December 11, 1980, and issued December 18, 1980.

FOR FURTHER INFORMATION CONTACT: James V. DeLong, Research Director of the Administrative Conference, 2120 L Street, NW, Washington, D.C. 20037, 202–254–7020.

SUPPLEMENTARY INFORMATION: Recommendation 80–5 is addressed to a problem arising under section 2112(a) of title 28, U.S. Code, which provides that, when petitions for judicial review of the same agency order are filed in two or more courts of appeals, the court in which the first petition was filed has initial jurisdiction of the proceeding to the exclusion of any other court. Where two or more petitioners for review of the same agency order have different forum preferences for the review proceeding, the result is frequently a costly and unseemly "race to the courthouse" which discredits the administrative and judicial processes.

The recommendation calls on Congress to amend section 2112(a) to provide that, if petitions to review the same agency order are filed in two or more courts of appeals within ten days after issuance of the order, the choice of which court to take initial jurisdiction of the proceeding should be made by random selection from among the circuits where petitions have been filed. This initial assignment would still be subject to the provision in section 2112(a) for transfer of the proceedings to another court for the convenience of the parties in the interest of justice. In the absence of such legislation, the recommendation calls on the agencies to specify in advance a time at which their orders are deemed to be issued for purposes of judicial review, and it urges the Supreme Court to provide by rule for a random selection procedure, in situations where petitions are filed simultaneously in two or more courts, to

select one court to determine where the agency record shall be filed.

This recommendation was adopted at the Twenty-Second Plenary Session of the Conference pursuant to the Administrative Conference Act, 5 U.S.C. 571–576. It is based on a draft prepared by the Conference's Committee on Judicial Review, which was published for comment on September 17, 1980 [45 FR 61636]. The final recommendation differs from the draft principally in the omission of the last paragraphs of Part A and Part B, which were thought to be unnecessarily detailed. In addition, the second paragraph of Part A was amended to call for a 15-day limit on any judicial stay entered in the period before a specific court was chosen to control further proceedings, and a number of other minor changes of language were made. All comments received and the transcript of the discussion of this recommendation at the Plenary Session are available for public inspection at the Conference's office at Suite 500, 2120 L Street, NW, Washington, D.C.

1. The table of contents to 1 CFR Part 305 is amended by adding the following new section:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNDITED States

* * * * *

Sec.

305.80–5 Eliminating or Simplifying the "Race to the Courthouse" in Appeals from Agency Action (Recommendation No. 80–5).

2. Section 305.80–5 is added to Part 305, as follows:

§ 305.80–5 Eliminating Or Simplifying the "Race to the Courthouse" In Appeals From Agency Action (Recommendation No. 80–5).

(a) Many agency actions subject to direct review in the courts of appeals involve more than one private party that may legitimately consider itself aggrieved by the agency action. In most such cases, a single court of appeals is not specified by statute as the reviewing court, and venue may lie in more than one such court. Many lawyers believe that one court of appeals is likely to be more receptive than another to their clients' arguments in an agency review proceeding. The choice of the reviewing court has therefore assumed large importance in the review of some actions of some agencies.

(b) A statute, 28 U.S.C. 2112(a), provides that, when petitions for appellate review of the same order are filed in two or more courts of appeals, the record of the agency proceeding is to be filed by the agency in the court in which the first petition was filed, and that court then has jurisdiction of the review proceeding to the exclusion of others. This provision has become less and less useful as the choice of forum has become more significant in lawyers' minds and races to the courthouse have proliferated and methods of conducting the races have become more refined. Races are now sometimes decided by seconds or fractions of seconds, if they can fairly be said to have been decided at all. (There is no single finish line to cross or tape to break; time stamping machines in clerks' offices are not synchronized.) Moreover, races will be even harder to judge as agencies adopt regulations designed to make the races fairer and more civilized, specifying the date and time at which agency orders are deemed to have been issued.

(c) The spectacle of the race to the courthouse is an unedifying one that tends to discredit the administrative and judicial processes and subject them to warranted ridicule. It will require Congressional action to bring the final curtain down on the spectacle. Our first and principal recommendation is addressed to Congress. It calls for simple random selection of the reviewing court when a race ends in a dead heat or near dead heat. Pending Congressional action, there are actions that the agencies and the courts themselves can take to ameliorate the present sorry situation, and we also make recommendations addressed to the agencies and to the Judiciary for such interim actions.

Part A. Recommendation to Congress.

1. Congress should amend 28 U.S.C. § 2112(a) to provide that, if petitions to review the same agency order have been filed in two or more courts of appeals within ten days after the order was issued, the agency is to notify an appropriate official body, such as the Administrative Office of the United States Courts, of that fact; that the appropriate official body, on the eleventh day after the issuance of the order, is to choose from among the circuits in which petitions have been filed according to a scheme of random selection and notify the agency of that choice; and that the agency is then to file the record of the proceeding in the court so chosen, which will take jurisdiction and conduct the review proceeding, subject to the existing power, which would not be changed, to transfer the case to any other court of appeals for the convenience of the parties in the interest of justice.

2. The amended Section 2112(a) should provide further that a court of appeals in which a petition for review has been filed that has jurisdiction to entertain the petition may, in a case of pressing need, issue a stay of the agency order during the period in which no court has been chosen to take jurisdiction of the proceeding, the stay to remain in effect for no more than 15 days, unless extended by the chosen court or a transferee court, and subject to revocation or modification by the chosen court or a transferee court; and that, if the court in which the record is filed determines that it lacks jurisdiction or venue is improperly laid but that jurisdiction and venue may be proper in another circuit, the court is to notify the official body administering the system of random selection of that fact, and that body then will choose from among the remaining courts in which petitions have been filed according to the same scheme of random slection.

Part B. Recommendation To the Agencies.

In the absence of legislation, those agencies whose actions have resulted or are likely to result in races to the courthouse should specify in advance a time at which their orders are to be deemed issued or their actions are otherwise ripe for judicial review. Such agencies should do this by generic regulation if possible and, if that is not possible, by specifying times of issuance or ripeness case by case.

Part C. Recommendation To the Judiciary.

In the absence of further legislation the Supreme Court should promulgate a rule under which, if petitions to review the same agency order are filed in two or more courts of appeals simultaneously (for example, within one minute of one another), the Administrative Office of the United States Courts is to be informed of that fact, and the Administrative Office is then to choose one court, according to a scheme of random selection, from among the circuits in which such simultaneous petitions are pending, which court shall then determine where the record is to be filed pursuant to 28 U.S.C. § 2112(a).

Dated: December 18, 1980.

Richard K. Berg,

Executive Secretary.

[FR Doc. 80-40114 Filed 12-23-80; 8:45 am]

BILLING CODE 6110-01-M

GENERAL ACCOUNTING OFFICE

4 CFR Parts 31, 33, 34 and 82

Claims and Records; Reorganization and Technical Amendments

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This rule amends Parts 31, 33 and 34 of Title 4, Code of Federal Regulations as amended by FR Doc. 80–10249, appearing on page 22873 of the issue for April 4, 1980; and also amends Parts 31 and 82 of Title 4, Code of Federal Regulations. These amendments were made necessary because of reorganizations within this Office that redesignated the former "Financial and General Management Studies Division" the "Accounting and Financial Management Division" and which transferred certain records management

functions from the Office of Administrative Services to the Office of Information Systems and Services of this Office. Another technical change is also included.

FOR FURTHER INFORMATION CONTACT: Richard T. Cambosos, Attorney-Advisor, Office of General Counsel, United States General Accounting Office, 441 G Street, NW., Washington, D.C. 20548, (202) 275-5544.

SUPPLEMENTARY INFORMATION: FR Doc. 80-10249, appearing on page 22873 of the issue for April 3, 1970, amended Parts 31, 33, and 34 of Title 3, Code of Federal Regulations, to change the reference to "Claims Division" appearing in these parts to "Claims Group, Financial and General Management Studies Division." Subsequently, the "Financial and General Management Studies Division" was redesignated the "'Accounting and Financial Management Division" of this Office.

Additionally, in FR Doc. 80-31931, the amendment numbered 3 appearing on page 68374 of the issue for October 15, 1980, redesignated "Part 1" to be "Part 11" of Title 4, Code of Federal Regulations. Consequently, the reference to "§ 1.8" appearing in § 31.3 of Title 4, Code of Federal Regulations must be changed to "§ 11.8" to conform with the prior amendment.

Finally, the reference to "Office of Administrative Services" appearing in § 82.1(a) of Title 4, Code of Federal Regulations is changed to "Office of Information Systems and Services." This change was made necessary because the record management functions formerly performed by the Office of Administrative Services were transferred to the Office of Information Systems and Services of this Office. Accordingly, Title 4, Code of Federal Regulations is amended as follows:

PART 31—CLAIMS AGAINST THE UNITED STATES: GENERAL PROCEDURES

PART 33—DECEASED CIVILIAN OFFICERS AND EMPLOYEES: PROCEDURES FOR SETTLEMENT OF ACCOUNTS

PART 34—DECEASED MEMBERS OF THE ARMED FORCES AND NATIONAL GUARD: PROCEDURES FOR SETTLEMENT OF ACCOUNTS

1. The reference to "Claims Group, Financial And General Management Studies Division" appearing in Parts 31, 33, and 34 as amended by FR Doc. 80-10249, appearing on page 22873 of the issue for April 4, 1980, is changed to "Claims Group, Accounting and Financial Management Division."

§ 31.3 [Amended]

2. The reference to "§ 1.8" in § 31.3 is changed to "§ 11.8".

PART 82—FURNISHING RECORDS OF GENERAL ACCOUNTING OFFICE IN JUDICIAL PROCEEDINGS

§ 82.1 [Amended]

3. The reference to "Office of Administrative Services" in § 82.1(a) is changed to "Office of Information Systems and Services".

Milton J. Socolar,

Acting Comptroller General of the United States.

[FR Doc. 80-40093 Filed 12-23-80; 8:45 am]

BILLING CODE 1610-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, and 873

Basic Life Insurance, Standard Optional Life Insurance, Additional Optional Life Insurance, and Family Optional Life Insurance

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 second phase of implementation of the Federal Employees' Group Life Insurance Act of 1980 (FEGLI), approved October 10, 1980, which has changed the FEGLI program from a two-part to a four-part package consisting of basic insurance and three optional plans.

DATES:

Effective date: The interim regulations are effective on December 24, 1980, unless otherwise specified.

Comment date: Comments must be received by February 23, 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) 632-4634.

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 require timely implementation of new group life insurance plans. The immediate effective date makes possible OPM's preparation and distribution of forms and materials necessary to make the new insurance available within the statutory time limit.

Introduction

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 withholdings, (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 employees 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 implemented the offering of increased post-age 65 basic life insurance at the earliest date permitted under the law, December 9, 1980 (see 45 FR 80472, December 5, 1980). The present interim regulations govern the two new optional plans, establish premium rates for coverage under them, and reduce the rates under the existing basic insurance and standard optional insurance effective on the first day of the first pay period beginning on or after April 1, 1981.

All employees will be given the opportunity to enroll for basic and optional coverages during an open enrollment period from March 1 through 31, 1981. Elections will be effective on or after April 1, 1981.

New Rates for Basic Insurance and Standard Optional Insurance

The Office of Personnel Management has re-evaluated the premium rates for basic insurance and standard optional insurance on the basis of experience. The new rates will be effective on the

first day of the first pay period beginning on or after April 1, 1981. The biweekly rate for basic insurance for employees is reduced from 25.5 cents to 24 cents per $1,000 of the employee's basic insurance amount. The biweekly rates for the $10,000 of standard optional insurance will be:

Age	Current rate	New rate
Under 35	$0.60	$0.60
35–39	1.00	0.88
40–44	1.70	1.40
45–49	2.40	2.20
50–54	3.50	3.20
55–59	7.50	7.50
60 or over	9.00	9.00

Additional Optional Insurance

Pub. L. 96–427 authorizes OPM to purchase a group life insurance policy, without competitive bidding, which will make available to each employee who is insured for basic insurance additional optional life insurance. This coverage is referred to in the regulations as "additional optional insurance." Employees pay the full cost of coverage. There is no Government contribution.

The biweekly cost per $1,000 of the additional optional insurance is:

Age	Rate
Under 35	$.05
35–39	.07
40–44	.12
45–49	.20
50–54	.30
55–59	.60
60 or over	.95

Employees must affirmatively elect the additional optional insurance in order to obtain the coverage. All employees who are serving in positions which are not excluded from FEGLI coverage must either elect or decline the additional optional insurance during an open enrollment period to be held Government-wide from March 1 through 31, 1981. Only those employees who enroll for basic insurance are allowed to elect additional optional insurance. An employee who fails to elect this coverage during that period will not be allowed to enroll at a later date unless he/she meets the requirements discussed below, or the employing agency determines within 6 months that the employee was not able to elect the coverage due to reasons beyond his/her control.

The additional optional insurance is offered in multiples of 1, 2, 3, 4, or 5 times the annual rate of basic pay payable to the employee. Before multiplying, the pay is rounded to the next higher multiple of $1,000. (When the annual pay is an exact multiple of $1,000, the exact rate is used.) Additional optional insurance coverage may not exceed 5 times the annual rate of basic pay payable for positions at level II of the Executive Schedule under 5 U.S.C. 5313, rounded to the next higher $1,000. Covered persons may elect to reduce or stop additional optional insurance coverage at any time, though the opportunity to re-elect or increase multiples is strictly limited by the regulations.

After March 31, 1981, an employee who does not have additional optional insurance will be allowed to elect it if he/she is enrolled (or enrolls) for basic insurance and (1) he/she is under age 50, (2) at least 1 year has elapsed since the date of the declination, and (3) he/she submits satisfactory medical evidence of insurability. An employee who satisfies all three requirements will be allowed to elect the additional optional insurance or to increase the number of multiples of this coverage. Also, an employee under age 36 may elect additional optional insurance without showing medical insurability if he/she has basic insurance and elects the coverage in timely fashion (usually within 60 days after the event permitting the election) following the birth, adoption or other acquisition of a child, as defined by the regulations. These interim regulations will also permit an employee under age 50 who has in force at least 1 multiple of pay under the additional optional insurance plan to increase the number of multiples without showing medical insurability upon the employee's marriage or acquisition of a child. The employee must elect the increase in timely fashion (usually within 60 days after the event permitting the increase). The regulations limit the number of multiples acquired on the basis of the occurrence of an event to the number of family members (spouse and/or children) acquired with the event, e.g., 1 new multiple for a single birth, 2 new multiples upon birth of twins.

Family Optional Insurance

Pub. L. 96–427 authorizes OPM to purchase a group life insurance policy, without competitive bidding, which shall make available to each employee covered for basic insurance an amount of optional insurance on his/her family members. This coverage is referred to in the regulations as "family optional insurance." Employees pay the full cost of coverage. There is no Government contribution. The amount of family optional insurance is $5,000 upon the death of a spouse and $2,500 upon the death of a child. The benefit is paid to the employee, unless the employee dies before the payment can be made, in which case the benefit is paid to the employee's beneficiary for basic insurance.

The biweekly cost of the family insurance is:

Age	Rate
Under 35	$0.50
35–39	0.60
40–44	0.70
45–49	0.90
50–54	1.30
55–59	2.00
60 or over	3.00

Employees must affirmatively elect the family optional insurance in order to obtain coverage. All employees who are serving in positions which are not excluded from FEGLI coverage must either elect or decline the family optional insurance during the March 1981 open enrollment period. Only those employees who enroll for basic insurance are allowed to elect the family optional insurance. An employee who fails to elect this coverage during March 1981 will be allowed to enroll at a later date only in the event that he/she marries, or upon the birth or adoption of a child, or other acquisition of a child, as defined in the regulations, or if the employing agency determines within 6 months that the employee was not able to elect the coverage due to reasons beyond his/her control.

Under the definition of a family member for the purposes of the FEGLI law "child" means an unmarried dependent child who is under the age of 22, or who is 22 years of age or older and incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age. These interim regulations provide the criteria to be used in determining the question of dependency, and in determining whether a child is to be considered incapable of self-support within the meaning of the FEGLI law. These regulations are similar to those in effect under Civil Service Retirement and Federal Employees Health Benefits regulations (see 45 FR 76087, November 18, 1980).

Open Enrollment Period

Because of the significant changes in the FEGLI program brought about by Pub. L. 96–427, OPM will hold an open enrollment period during the month of March 1981. Employees will be allowed to elect insurance irrespective of age, health or past participation in the

program. The regulations provide that all waivers and declinations of existing basic and optional insurance filed before March 1981 are automatically canceled.

All non-excluded employees will be required to complete a Life Insurance Election form during March 1981, whether or not they are already participating in the FEGLI program. Employees who are already covered for basic insurance will continue that coverage unless they waive it. Employees who are already covered for standard optional insurance ($10,000) will lose that portion of their coverage unless they affirmatively re-elect it during March 1981. In the event that an employee does not complete the Life Insurance Election form during March 1981, employing agencies will file an election of basic insurance and a declination of all optional coverages on his/her behalf on March 31, 1981. However, if within 6 months an agency determines that an employee was unable to complete the form during March for reasons beyond his/her control, the employee will be allowed 31 days from the date of the agency's determination in which to complete the form.

Effective Dates

Open enrollment period elections will generally become effective on the first day on or after April 1, 1981, on which an employee actually enters on duty in a pay status. An employee who is on leave and an employee who does not actually return to duty at his/her workplace on or after April 1, 1981, does not satisfy this requirement.

New hires during the month of March 1981 who are eligible for life insurance will be immediately covered for basic insurance from the time they actually enter on duty in pay status, unless they file a waiver of coverage before the end of the first pay period. These new hires will have the standard optional insurance on the first day they actually enter on duty in a pay status on or after the date on which they file an election of that coverage. However, additional optional insurance and family optional insurance coverage, if elected during March, become effective on the first day on or after April 1, on which the employee actually enters on duty in a pay status.

An employee who is already covered for standard optional insurance during March 1981 and who declines that coverage while retaining basic insurance will continue to be insured for both basic insurance and the standard optional insurance through the end of the pay period which includes March 31, 1981. A waiver of all coverage is effective at the end of the pay period in which it is received in the employing office.

Continuation of Insurance During Retirement or Receipt Workers' Compensation

An employee who retires on an immediate annuity, or who becomes entitled to receive workers' compensation under the Federal Employees Compensation Act because of disease or injury to himself/herself is entitled to continue as many multiples of additional optional insurance as have been in force for not less than: (1) the 5 years of service immediately preceding the date of retirement or entitlement to compensation or (2) the full period(s) of service during which the insurance was available to him/her. The same participation requirement for continuation of insurance exists under the law for standard optional insurance and family optional insurance. The optional coverages may continue for as long as the individual continues to be enrolled for basic insurance while the individual continues to receive annuity or workers' compensation and is held by the Department of Labor to be unable to return to duty. Withholdings for the full cost of the optional insurance continue to be taken from the annuity or compensation payments until the month following the month in which the individual becomes 65 years of age and is retired or receiving compensation.

Beginning with the second calendar month after a retiree or compensationer become 65 years of age the optional coverages begin to reduce by 2 percent a month. The maximum reduction for the standard optional insurance is 75 percent of the face value. For additional optional insurance and family optional insurance this reduction continues until the insurance stops completely after 50 months. Once the reductions have begun, there are no withholdings from annuity or compensation for the optional coverages.

Reemployed Annuitants

There shall be no change in the current treatment of reemployed annuitants with respect to standard optional insurance coverage during reemployment. Retirees who are continuing standard optional insurance during retirement and who are reemployed in non-excluded positions will have the standard optional insurance coverage as employees unless the coverage is declined or waived, and the standard optional insurance as a retiree is suspended during reemployment. Withholdings for the full cost of the coverage are taken from salary. Following reemployment which is qualifying for a supplemental annuity, the individual may continue the reemployment-acquired insurance. If the reemployment period does not continue long enough for a supplemental annuity benefit to attach, the suspended insurance may be reinstated following separation from the reemployment.

These interim regulations provide for the same treatment with regard to family optional insurance of reemployed annuitants. However, the additional optional insurance of reemployed annuitants who have this coverage as retirees will not be automatically suspended upon reemployment. A reemployed annuitant in a non-excluded position will have the opportunity to elect either to continue additional optional insurance as a retiree or to have that coverage suspended and have additional optional insurance as an employee during reemployment. Following reemployment which is qualifying for a supplemental annuity, the individual may then continue the additional optional insurance acquired as a reemployed annuitant or the suspended additional optional insurance may be reinstated (if any remains after the post-age 65 reductions). If reemployment does not qualify the person for a supplemental annuity, any suspended additional optional insurance which remains in effect may be reinstated following separation from reemployment.

Waiver of Collection of Overpayment

Pub. L. 96–427 amends the FEGLI law to allow an agency which has failed to withhold the proper FEGLI deductions from an individual's salary, annuity or compensation to waive the collection of the corresponding overpayments of salary, annuity or compensation if, in the judgment of the agency, 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 to OPM the uncollected FEGLI withholdings and 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. These interim regulations provide that waivers of collections of life insurance deductions will be governed by the same standards, in cases where 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 Subchapter G, Chapter I, which implements the provisions of 5 U.S.C. 5584 allowing agencies to waive collections of over-paid salary or allowances.

These interim regulations also make a technical amendment to 5 CFR 870.601(b) (see 45 FR 80472, December 5, 1980) needed to correct a reference in that paragraph to a non-existent paragraph (h). The reference is changed to paragraph (g) of the same section.

At the time OPM publishes final regulations, uniform nomenclature changes and editorial revisions will be added throughout Parts 870 and 871.

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 Parts 870 and 871 of Title 5, Code of Federal Regulations, and adding new Parts 872 and 873, as follows:

PART 870—BASIC LIFE INSURANCE

(1) In Part 870, paragraphs (a), (b), and (f)(1) of § 870.401 are revised, effective on the first day of the first pay period beginning on or after April 1, 1981, to read as follows:

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, $0.24 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, adjusted to the nearest cent.

(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 $0.24 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.

* * * * *

(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 $0.52 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.120 for each $1,000 of the BIA.

* * * * *

(2) In Part 870, § 870.601(b) is revised to read as follows:

Subpart F—Retired Employees

§ 870.601 Eligibility for life insurance.

* * * * *

(b) An employee who meets the requirements under paragraphs (a) or (g) 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.

* * * * *

(3) The heading of Part 871 is revised, effective April 1, 1981, to read as follows:

PART 871—STANDARD OPTIONAL LIFE INSURANCE

(4) In Part 871, § 871.101 is revised, effective April 1, 1981, to read as follows:

Subpart A—Administration and General Provisions

§ 871.101 Actions on the policy.

Optional life and accidental death and dismemberment benefits (referred to in this part as "standard optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, NY 10010, under section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States should be brought against the insurance company.

(5) In Part 871, § 871.202 and § 871.204(b) are revised, and §§ 871.204(d) and 871.205(e) are added, effective March 1, 1981, to read as follows:

Subpart B—Coverage

§ 871.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline standard optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he/she was unable, for cause beyond his/her control to elect or decline the standard optional insurance within the prescribed time limit, the employee shall elect or decline the standard optional insurance within 31 days after he/she is advised of that determination. Standard optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired and under age 65.

(c) A person who does not file a Life Insurance Election form with his/her employing office does not have standard optional insurance.

§ 871.204 Declination.

* * * * *

(b) A cancellation of standard optional insurance becomes effective and standard optional insurance stops at the end of the pay period in which the declination or waiver is received in the employing office, except that a declination of standard optional insurance (which is not also a waiver of basic insurance) which is filed during the period from March 1, 1981 through March 31, 1981, becomes effective and standard optional insurance stops at the end of the pay period which includes March 31, 1981.

* * * * *

(d) For the purpose of having standard optional insurance as an employee, an election of insurance under this part filed on or before February 28, 1981, is deemed to have been canceled effective at the end of the pay period which includes March 31, 1981, unless the employee does not actually enter on duty in pay status during the first pay period which begins on or after April 1, 1981, in which case the election is deemed to have been canceled on the first day after the end of such pay period that the employee actually enters on duty in pay status. In order to retain or obtain standard optional insurance as an employee after the date of such

declination an employee must affirmatively elect the coverage by filing the Life Insurance Election form with his/her employing office, subject to the provisions of § 871.205.

§ 871.205 Cancellation of declination.

* * * * *

(e) Declinations of standard optional insurance filed on or before February 28, 1981, are automatically canceled effective on the first day an employee whose declination is so canceled actually enters on duty in pay status on or after April 1, 1981, and the standard optional insurance is effective on the date of cancellation of the declination, provided that the employee has filed an affirmative election of standard optional insurance on the form entitled Life Insurance Election during the period from March 1, 1981 through March 31, 1981. An employee whose pre-March 1981 declination is so canceled and who does not file the form with his/her employing office during the period from March 1, 1981 through March 31, 1981, shall be deemed to have declined standard optional insurance on March 31, 1981, except that an employee who fails to file the form during that period due to cause beyond his/her control shall be allowed to enroll belatedly under the conditions prescribed under § 871.202(b).

(6) In Part 871, § 871.401(c) is revised, and § 871.401(g) is added, effective on the first day of the first pay period beginning on or after April 1, 1981, to read as follows:

Subpart D—Withholdings

§ 871.401 Withholdings.

* * * * *

(c) The biweekly full cost of the $10,000 of standard optional insurance (and for a person in receipt of annuity or compensation for work injury, of standard optional life insurance), until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35	$0.69
For persons ages 35 through 39	$0.80
For persons ages 40 through 44	$1.40
For persons ages 45 through 49	$2.20
For persons ages 50 through 54	$3.20
For persons ages 55 through 59	$7.50
For persons age 60 or over	$9.00

The amount withheld from the pay of a person paid on other than a biweekly period or insured for more than $10,000 shall be determined at a proportionate rate, adjusted to the nearest cent.

* * * * *

(g)(1) If OPM fails to withhold proper amounts of standard optional 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 chapter 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 chapter 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.

(7) In Part 871, paragraph (b) of § 871.501 is revised, paragraphs (c) and (d) are redesignated (d) and (e), and paragraph (c) is added, to read as follows:

Subpart E—Termination and Conversion

§ 871.501 Termination and conversion of insurance.

* * * * *

(b) If, because of a declination or waiver, an insured employee has not had the standard optional insurance during the full period(s) of service during which it was available to him/her, or for the 5 years of service immediately preceding the date on which that coverage stops, whichever is less, the optional insurance stops, subject to a 31-day extension standard optional life insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of § 870.601 (during retirement) or § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter, he/she elects no basic life insurance during receipt of annuity or compensation (as provided under §§ 870.601(c)(1) and 870.701(c)(1) of this chapter), the standard optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

* * * * *

(8) In Part 871, § 871.601 and § 871.604(b) are revised to read as follows:

Subpart F—Retired Employees and Employees Compensation

§ 871.601 Amount of insurance.

The amount of standard optional life insurance which is continued during receipt of annuity or compensation reduces by 2 percent a month effective at the beginning of the second calendar month after (a) the date the insurance would otherwise have stopped, or (b) the retiree's or compensationer's 65th birthday, whichever is later, with a maximum reduction of 75 percent.

§ 871.604 Reemployed retired employees.

* * * * *

(b) Standard optional insurance acquired during reemployment may be continued after termination of the reemployment of the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3) or (c)(4) of § 870.601 of this chapter, and

(3) Has had standard optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less.

If the standard optional life insurance acquired during reemployment is so continued, any suspended standard optional life insurance stops with no 31-day extension of coverage or right of conversion.

(9) Part 872 is added to read as follows:

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

Subpart A—Administration and General Provisions

Sec.

872.101 Actions on the policy.
872.102 Payment of benefits; designations of beneficiary.
872.103 Correction of an error, mistake, or omission.

Subpart B—Coverage

872.201 Eligibility.
872.202 Election or declination.
872.203 Effective date of insurance.
872.204 Declination.
872.205 Cancellation of declination.
872.206 Reconsideration.

Subpart C—Amount of Insurance

Sec.
872.301 Amount of employee's insurance.

Subpart D—Withholdings

872.401 Withholdings.

Subpart E—Termination and Conversion

872.501 Termination and conversion of insurance.

Subpart F—Retired Employees and Employees Compensation

872.601 Amount of insurance.
872.602 Termination of annuity compensation.
872.603 Waiver or supension of annuity or compensation.
872.604 Reemployed retired employees.

Authority: 5 U.S.C. 8716. Interprets and applies 5 U.S.C. 8714b.

Subpart A—Administration and General Provisions

§ 872.101 Actions on the policy.

Optional life insurance (referred to in this part as "additional optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States, should be brought against the insurance company.

§ 872.102 Payment of benefits; designations of beneficiary.

Additional optional insurance in force on a person at the date of his/her death shall be paid, on receipt of a valid claim, in the same order of precedence and under the same conditions as are applicable to basic insurance. A designation of beneficiary for basic insurance is also a designation of beneficiary for additional optional insurance unless the insured person specifies otherwise in his/her designation.

§ 871.103 Correction of an error, mistake, or omission.

The Associate Director for Compensation may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director that it would be against equity and good conscience not to do so.

Subpart B—Coverage

§ 872.201 Eligibility.

Each employee, as defined in section 8701 of title 5, United States Code, who is insured for basic insurance and for whom an uncanceled declination of additional optional insurance is not in effect is eligible to elect the additional optional insurance, if his/her periodic pay, after all other deductions, is sufficient to cover its full cost

§ 872.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline the additional optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect. The 31-day time limit begins to run on the first day after February 28, 1981, on which an individual meets the definition of an employee under 5 U.S.C. 8701.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he/she was unable, for cause beyond his/her control to elect the additional optional insurance within the prescribed time limit regulation, the employee shall elect or decline the optional insurance within 31 days after he/she is advised of that determination. Additional optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired and under age 65.

(c) A person who does not file a Life Insurance Election form with his/her employing office does not have the additional optional insurance.

§ 872.203 Effective date of insurance.

(a) The effective date of an election of additional optional insurance is the first day on or after April 1, 1981, that an employee actually enters on duty in a pay status on or after the day the election is received in his/her employing office.

(b) An election of additional optional insurance remains in effect until canceled as provided in § 872.204. For an employee whose additional optional insurance has stopped for a reason other than a declination or waiver, additional optional insurance is reinstated on the first day he/she actually enters on duty in a pay status in a position in which he/she again becomes eligible.

§ 872.204 Declination.

(a) An insured person may at any time cancel his/her additional optional insurance by filing with his/her employing office (which for a retired employee is the office that administers his/her retirement sytem, and, for an employee or former employee in receipt of compensation for work injury under subchapter I of chapter 81 of title 5, United States Code, is the Department of Labor) a declination of additional optional insurance or a waiver of basic insurance coverage. An insured person may at any time reduce the number of his/her multiples of additional optional insurance by filing a Life Insurance Election form with his/her employing office.

(b) A cancellation of additional optional insurance becomes effective and additional optional insurance stops at the end of the pay period in which the declination or waiver is received in the employing office. A reduction in the number of additional optional insurance multiples is effective at the end of the pay period in which the Life Insurance Election form is received in the employing office.

(c) A declination or reduction in multiples of additional optional insurance remains in effect until it is canceled as provided in § 872.205.

§ 872.205 Cancellation of declination.

(a)(1) An employee who has declined the additional optional insurance may elect it if (A) he/she is under age 50, (B) at least 1 year has elapsed since the effective date of his/her last declination or waiver, and (C) he/she furnishes satisfactory evidence of insurability.

(2) An employee who has declined additional optional insurance may elect it upon his/her marriage or the acquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and Subpart G of Part 873 of this chapter, except that the election must be received in the employing office before the employee's 36th birthday. In order to be valid, the election must be filed with the employing office on the Life Insurance Election form during the 60-day period following the date of the event which permits the election. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, or if the individual separates from covered service prior to completion of the 60-day time limit. This extension of the time limit is limited to coincide with the 31-day time limit for electing insurance following employment in a covered position. The number of multiples which an employee may obtain upon acquisition of a spouse or child is limited to the number of family members (spouse and/or children) acquired with the event which permits the employee to

elect additional optional insurance under this paragraph.

(3) An employee who has in force additional optional insurance of at least 1 multiple of annual pay but less than 5 multiples of annual pay may increase the number of multiples if he/she meets the requirements of paragraph (a)(1) of this section.

(4) An employee who has in force additional optional insurance of at least 1 multiple of annual pay but less than 5 multiples of annual pay may elect to increase the number of multiples upon his/her marriage or the aquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and Subpart G of Part 873 of this chapter, except that the election must be received in the employing office before the employee's 50th birthday. In order to be valid, the election to increase multiples must be filed with the employing office on the Life Insurance Election form during the 60-day period following the date of the event which permits the increase. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, or if the individual separates from covered service prior to completion of the 60-day time limit. This extension of the time limit is limited to coincide with the 31-day limit for electing insurance following employment in a covered position. The number of multiples which an employee may add upon acquisition of a spouse or child is limited to the number of family members (spouse and/or children) acquired with the event which permits the employee to increase multiples.

(b)(1) The effective date of the additional optional insurance for an employee who has complied with paragraphs (a)(1) or (a)(3) of this section is the first day he/she actually enters on duty in a pay status, on or after the day his/her election is received in his/her employing office following the approval of his/her Request for Insurance by the Office of Federal Employees' Group Life Insurance.

This approval is revoked automatically and the additional optional insurance does not become effective if the employee fails to submit his/her election or meet the pay and duty status requirement within 31 days following the date of the approval.

(2) The effective date of an election under paragraphs (a)(2) or (a)(4) of this section is the first day the employee actually enters on duty in a pay status, on or after the day his/her election is received in the employing office.

(c) A former employee and an employee who is continuing basic life insurance during receipt of compensation is not eligible to cancel a declination under this section, nor to increase multiples of additional optional insurance.

§ 872.206 Reconsideration.

(a) *Who may file.* An individual or annuitant may request the OPM to reconsider an agency decision or an initial decision of OPM denying additional optional insurance coverage.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by OPM. The time limit may be extended as provided in paragraph (e) of this section.

(c) *Initial OPM decision.* An OPM decision shall be considered an initial decision when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration.

(d) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number, if applicable, and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial decision must be filed within 30 calendar days from the date of the initial decision. OPM may extend the time limit for filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After consideration, OPM shall issue a final decision which shall be in writing and shall fully set forth the findings and conclusions of OPM.

Subpart C—Amount of Insurance

§ 872.301 Amount of employee's insurance.

An eligible employee may elect additional optional insurance of 1, 2, 3, 4, or 5 multiples of his/her annual pay. For this purpose, each multiple is equal to the lowest multiple of $1,000 which is not less than the current rate of the employee's annual pay as determined under § 870.302 of this chapter. A multiple shall not exceed the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of title 5, United States Code, rounded to the next higher multiple at $1,000.

Subpart D—Withholdings

§ 872.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay status there shall be withheld from his/her pay the full cost of his/her additional optional insurance as specified in paragraph (c) of this section.

(b) Subject to the provisions of § 872.604, for any period before the first of the month following his/her 65th birthday during which an insured retired employee (or employee or former employee in receipt of compensation for work injury) receives annuity (or compensation), there shall be withheld from his annuity (or compensation) the full cost of his/her additional optional insurance as specified in paragraph (c) of this section.

(c) The biweekly full cost per $1,000 of additional optional insurance in force, until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35—$0.05
For persons ages 35 through 39—$0.07
For persons ages 40 through 44—$0.12
For persons ages 45 through 49—$0.20
For persons ages 50 through 54—$0.30
For persons ages 55 through 59—$0.60
For persons age 60 or over—$0.95

The amount withheld from the pay of a person paid on other than a biweekly period shall be determined at a proportionate rate, adjusted to the nearest one-tenth of one cent.

(d) For the purposes of this section, a person is deemed to attain 35, 40, 45, 50, 55, or 60 years of age on the first day of his/her pay period beginning on or after January 1 of the year following the one in which his/her corresponding birthday occurs.

(e) The amount withheld from the pay of an insured person whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate for his/her age group to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

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

(g)(1) If OPM fails to withhold proper amounts of 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 chapter 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 chapter 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 E—Termination and Conversion

§ 872.501 Termination and conversion of insurance.

(a) The additional optional insurance of an insured employee stops when his/her basic insurance stops as provided in § 870.501 of this chapter subject to a 31-day extension of additional optional insurance coverage.

(b) If, because of a declination or waiver, an insured employee has not had the additional optional insurance during the full period(s) of service during which it was available to him/her, or for the 5 years of service immediately preceding the date on which the insurance stops, whichever is less, the additional optional insurance stops, subject to a 31-day extension of additional optional insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of § 870.601 (for retirement) or § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter (for basic life insurance during receipt of annuity or compensation), he/she elects no basic life insurance (as provided under §§ 870.601(c)(1) or 870.701(c)(1) of this chapter), the additional optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(d) The additional optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation for work injury, or annuity, after all other deductions, is insufficient to cover the full cost of the additional optional insurance.

(e) During the 31-day extension of additional optional insurance coverage under this section, a person may, upon application and without medical examination convert all or any part of his/her additional optional insurance to an individual policy of life insurance at rates applicable to his/her attained age and class of risk unless, within 3 calendar days after the date his/her additional optional insurance stopped, he/she returns to a position in which he/she is not excluded from coverage.

Subpart F—Retired Employees and Employees Compensation

§ 872.601 Amount of insurance.

(a) Each multiple of additional optional insurance continued during receipt of annuity or compensation reduces by 2 percent a month effective at the beginning of the second calendar month after (1) the date the insurance would otherwise have stopped, or (2) the insured's 65th birthday, whichever is later. At 12:00 PM on the day preceding the 50th reduction the insurance stops, with no extension of coverage or right of conversion.

(b) The number of multiples of additional optional insurance which may be continued during receipt of annuity or compensation is the smallest number of multiples in force during (1) the 5 years of service immediately preceding separation from employment or entitlement to compensation, or (2) the full period(s) of service during which the additional optional insurance was available to the employee.

§ 872.602 Termination of annuity or compensation.

If the annuity or compensation for work injury paid to an insured person is terminated, or if the Department of Labor finds that an insured person receiving compensation for work injury is able to return to duty, additional optional insurance held as a retired employee or person receiving compensation stops, with no 31-day extension of coverage or right of conversion, on the date of that termination or finding.

§ 872.603 Waiver of suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation for work injury is waived or suspended, additional optional insurance continues. When payment of the annuity or compensation is resumed, the employing office shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemployment office shall withhold the full cost of the insurance during each pay period of reemployment.

§ 872.604 Reemployed retired employees.

(a)(1) A retired employee appointed to a position in which he/she is not excluded from basic insurance by law or regulation is eligible for additional optional insurance as an employee, unless he/she has on file an uncanceled waiver of basic insurance or declination of additional optional insurance. If he/she has additional optional insurance as a retired employee, that insurance (and any applicable annuity withholdings) continues as if the individual were not reemployed, unless (i) the person files with his/her employing office within 31 days following the date of reemployment an election of additional optional insurance on the Life Insurance Election form, in which case the additional optional insurance (and corresponding annuity withholdings) as a retiree is suspended effective on the date that the additional optional insurance as an employee becomes effective, or (ii) the person files a waiver of basic insurance.

(2) Except as provided in paragraph (b) of this section, the additional optional insurance acquired as an employee stops, with no 31-day extension or right of conversion, on the date reemployment terminates and any suspended additional optional insurance which remains in force after applicable monthly reductions after age 65 (and corresponding annuity withholdings, if any) is reinstated on the day following termination of the reemployment.

(b) Additional optional insurance acquired during reemployment may be continued after termination of the reemployment if the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3), or (c)(4) of § 870.601 of this chapter, and

(3) Has had additional optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less. If the additional optional insurance acquired during reemployment is so continued, any suspended additional optional insurance stops with no 31-day

extension of coverage or right of conversion.

(10) Part 873 is added to read as follows:

PART 873—FAMILY OPTIONAL LIFE INSURANCE

Subpart A—Administration and General Provisions

Sec.

873.101 Actions on the policy.
873.102 Payment of benefits.
873.103 Correction of an error, mistake, or omission.

Subpart B—Coverage

873.201 Eligibility.
873.202 Election or declination.
873.203 Effective date of insurance.
873.204 Declination.
873.205 Cancellation of declination.
873.206 Reconsideration.

Subpart C—Amount of Insurance

873.301 Amount of employee's insurance.

Subpart D—Withholdings

873.401 Withholdings.

Subpart E—Termination and Conversion

873.501 Termination and conversion of insurance.

Subpart F—Retired Employees and Employees Compensation

873.601 Amount of insurance.
873.602 Termination of annuity or compensation
873.603 Waiver or suspension of annuity or compensation.
873.604 Reemployed retired employees.

Subpart G—Definition of Family Member

873.701 Definition of family member.
873.702 Proof of dependency.
873.703 Child incapable of self-support.

Authority: 5 U.S.C. 8716. Interprets and applies 5 U.S.C. 8714c.

Subpart A—Administration and General Provisions

§ 873.101 Actions on the policy.

Optional life insurance on family members (referred to in this part as "family optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States, should be brought against the insurance company.

§ 873.102 Payment of benefits.

Family optional insurance in force on a spouse or child at the date of his/her death shall be paid to the employee or former employee whose pay, annuity or compensation is subject to withholding under § 873.401, except that in the event that payment is not made prior to the death of the employee, the insurance shall be paid to the person(s) eligible for the basic insurance on the employee or former employee.

§ 873.103 Correction of an error, mistake, or omission.

The Associate Director for Compensation may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director that it would be against equity and good conscience not to do so.

Subpart B—Coverage

§ 873.201 Eligibility.

Each employee, as defined by section 8701 of title 5, United States Code, who is insured for basic insurance and for whom an uncanceled declination of family optional insurance is not in effect is eligible to elect the family optional insurance, if his/her periodic pay, after all other deductions, is sufficient to cover its full cost.

§ 873.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline the family optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect. The 31-day time limit begins to run on the first day after February 28, 1981, on which an individual meets the definition of an employee under 5 U.S.C. 8701.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he/she was unable, for cause beyond his/her control to elect or decline the family optional insurance within the prescribed time limit, the employee shall elect or decline the family optional insurance within 31 days after he/she is advised of that determination. Family optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired and under age 65.

(c) A person who does not file a Life Insurance Election form with his/her employing office does not have the family optional insurance.

§ 873.203 Effective date of insurance.

(a) The effective date of an election of family optional insurance is the first day on or after April 1, 1981, that an employee actually enters on duty in a pay status on or after the day the election is received in his/her employing office.

(b) An election of family optional insurance remains in effect until canceled as provided in § 873.204. For an employee whose family optional insurance has stopped for a reason other than a declination or waiver, family optional insurance is reinstated on the first day he/she actually enters on duty in a pay status in a position in which he/she again becomes eligible.

§ 873.204 Declination.

(a) An employee may at any time cancel his/her family optional insurance by filing with his/her employing office (which for a retired employee is the office that administers his/her retirement system, and, for an employee or former employee in receipt of compensation for work injury under subchapter I of chapter 81 of title 5, United States Code, is the Department of Labor) a declination of family optional insurance or a waiver of basic insurance coverage.

(b) A cancellation of family optional insurance becomes effective and family optional insurance stops at the end of the pay period in which the declination or waiver is received in the employing office.

(c) A declination of family optional insurance remains in effect until it is canceled as provided in § 873.205.

§ 873.205 Cancellation of declination.

(a) An employee who has declined the family optional insurance may elect it upon his/her marriage or the acquisition of a child. In order to be valid, the election must be filed with the employing office on the Life Insurance Election form during the 60-day period following the date of the event which permits the election. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, if the individual separates from covered service prior to completion of the 60-day time limit, or if the event occurs during the period following a waiver of basic insurance when he/she is not eligible to cancel the waiver. This extension of the time limit is limited to coincide with the 31-day time limit for electing insurance following employment in a covered position, or with the 31-day period

following the first day on which the individual becomes eligible to cancel a waiver of basic insurance.

(b) The effective date of the family optional insurance for an employee who has complied with paragraph (a) of this section is the first day he/she actually enters on duty in a pay status, on or after the day his/her election is received in his/her employing office and basic insurance is in force.

(c) A former employee and an employee who is continuing basic insurance as a compensationer is not eligible to make the election provided in paragraph (a) of this section.

§ 873.206 Reconsideration.

(a) *Who may file.* An individual or annuitant may request the OPM to reconsider an agency decision or an initial decision of OPM denying family optional insurance coverage.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by OPM. The time limit may be extended as provided in paragraph (e) of this section.

(c) *Initial OPM decision.* An OPM decision shall be considered an initial decision when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration.

(d) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number, if applicable, and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial decision must be filed within 30 calendar days from the date of the initial decision. OPM may extend the time limit for filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration, OPM shall issue a final decision which shall be in writing and shall fully set forth the findings and conclusions of OPM.

Subpart C—Amount of Insurance

§ 873.301 Amount of employee's insurance.

The amount of family optional insurance is $5,000 payable upon the death of a spouse and $2,500 payable upon the death of a child.

Subpart D—Withholdings

§ 873.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay status there shall be withheld from his/her pay the full cost of his/her family optional insurance as specified in paragraph (c) of this section.

(b) Subject to the provisions of § 873.604, for any period before the first of the month following his/her 65th birthday during which an insured retired employee (or employee or former employee in receipt of compensation for work injury) receives annuity (or compensation), there shall be withheld from his annuity (or compensation) the full cost of his/her family optional insurance as specified in paragraph (c) of this section.

(c) The biweekly full cost of family optional insurance in force, until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35—$0.50
For persons ages 35 through 39—$0.60
For persons ages 40 through 44—$0.70
For persons ages 45 through 49—$0.90
For persons ages 50 through 54—$1.30
For persons ages 55 through 59—$2.00
For persons age 60 or over—$3.00

The amount withheld from the pay of a person paid on other than a biweekly period shall be determined at a proportionate rate, adjusted to the nearest cent.

(d) For the purposes of this section, a person is deemed to attain 35, 40, 45, 50, 55, or 60 years of age on the first day of his/her pay period beginning on or after January 1 of the year following the one in which his/her corresponding birthday occurs.

(e)(1) If OPM fails to withhold proper amounts of 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 chapter 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 chapter 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 E—Termination and Conversion

§ 873.501 Termination and conversion of insurance.

(a) The family optional insurance of an insured employee stops when his/her basic insurance stops as provided in § 870.501 of this chapter subject to a 31-day extension of family optional insurance coverage.

(b) If, because of a declination or waiver, an insured employee has not had the family optional insurance during the full period(s) of service during which he/she was serving in a position subject to this part, or for the 5 years of service immediately preceding the date on which the insurance stops, whichever is less, the family optional insurance stops, subject to a 31-day extension of family optional insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of § 870.601 (for retirement) or under the provisions of § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter (for basic life insurance during receipt of annuity or compensation), he/she elects no basic life insurance (as provided under §§ 870.601(c)(1) or 870.701(c)(1) of this chapter), the family optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(d) The family optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation for work injury, or annuity, after all other deductions, is insufficient to cover the cost of the family optional insurance.

(e) During the 31-day extension of family optional insurance coverage under this section, a person may, upon application and without medical examination, convert his/her family optional insurance to an individual policy of life insurance at rates applicable to his/her attained age and class of risk unless, within 3 calendar days after the date his/her family optional insurance stopped, he/she returns to a position in which he/she is not excluded from coverage.

(f) During the 31-day period following the death of an insured employee, or during the 31-day extension of family optional insurance under this section, each one of the employee's or former employee's family members as defined by 5 U.S.C. 8701(d) may, upon application and without medical examination, convert the amount of family optional insurance coverage in force (maximums of $5,000 for a spouse and $2,500 for a child) to an individual policy of life insurance at rates applicable to his/her attained age and class of risk unless, within 31 days after the date the employee's or former employee's family optional insurance stopped, he/she returns to a position in which he/she is not excluded from coverage. The family member's right of conversion does not attach if the employee or former employee exercises his/her right of conversion under paragraph (e) of this section.

(g) The amount of an individual policy as provided under paragraphs (e) or (f) of this section shall not be less than $1,000.

Subpart F—Retired Employees and Employees Compensation

§ 873.601 Amount of insurance.

The amount of family optional insurance (on each family member) continued during receipt of annuity or compensation reduces by 2 percent a month effective at the beginning of the second calendar month after (1) the date the insurance would otherwise have stopped, or (2) the retiree's or compensationer's 65th birthday, whichever is later. At 12:00 PM on the day preceding the 50th reduction the insurance stops, with no extension of coverage or right of conversion.

§ 873.602 Termination of annuity or compensation.

If the annuity or compensation for work injury paid to an insured person is terminated, or if the Department of Labor finds that an insured person receiving compensation for work injury is able to return to duty, family optional insurance held as a retired employee or person receiving compensation stops, with no 31-day extension of coverage or right of conversion, on the date of that termination or finding.

§ 873.603 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation for work injury is waived or suspended, family optional insurance continues. When payment of annuity or compensation is resumed, the employing office shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemploying office shall withhold the full cost of the insurance during each pay period of reemployment.

§ 873.604 Reemployed retired employees.

(a)(1) A retired employee appointed to a position in which he/she is not excluded from basic insurance coverage by law or regulation is eligible for family optional insurance as an employee. If he/she has family optional insurance as a retired employee, that insurance (and any corresponding withholdings) is suspended on the day preceding his/her first day in a pay status under the appointment and, unless he/she files with his/her employing office a declination of family optional insurance (or a waiver of basic insurance), he/she acquires family optional insurance as an employee.

(2) Except as provided in paragraph (b) of this section, the family optional insurance acquired as an employee stops, with no 31-day extension or right of conversion, on the date reemployment terminates and any suspended family optional insurance which may remain in force following reductions is reinstated on the day following termination of the reemployment.

(b) Family optional insurance acquired during reemployment may be continued after termination of the reemployment if the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3), or (c)(4) of § 870.601 of this chapter, and

(3) Has had family optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less.

If the family optional insurance acquired during reemployment is so continued, any suspended family optional insurance stops with no 31-day extension of coverage or right of conversion.

Subpart G—Definition of Family Member

§ 873.701 Definition of family member.

For the purposes of this part, the terms "spouse" and "child" shall mean a spouse and unmarried dependent child within the meaning of these terms under the definition of "family member" under 5 U.S.C. 8701(d).

§ 873.702 Proof of dependency.

(a) A child is considered to have been dependent on an employee or former employee if he/she is:

(1) A legitimate child,

(2) An adopted child,

(3) A stepchild or recognized natural child who lived with the employee or former employee in a regular parent-child relationship,

(4) A recognized natural child for whom a judicial determination of support had been obtained, or

(5) A recognized natural child to whose support the employee or former employee made regular and substantial contribution.

(b) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support.

(1) Evidence of eligibility as a dependent child for benefits under State or Federal programs,

(2) Proof of inclusion of the child as a dependent on the employee's or former employee's income tax returns,

(3) Canceled checks, money orders, or receipts, for periodic payments from the employee or former employee for or on behalf of the child,

(4) Evidence of goods or services which show regular and substantial contributions,

(5) Any other evidence which the Office of Federal Employees' Group Life Insurance shall find to be sufficient proof of support or of paternity or maternity.

(c) The Office of Federal Employees' Group Life Insurance may deny an individual coverage as a dependent child, if:

(1) Evidence shows that the employee or former employee did not recognize the child as his/her own despite a willingness to support the child, or

(2) Evidence calls the child's paternity or maternity into doubt, despite the employee's or former employee's recognition and support of the child.

(d) For the purposes of an employee's election of family optional insurance upon the acquisition of a child, as provided in § 873.205, the employing agency shall base any requisite determination of dependency on the criteria expressed in paragraphs (a), (b), and (c) of this section.

§ 873.703 Child incapable of self-support.

(a) Upon receipt of a claim for family optional insurance in the event of death of a child over the age of 21 years, the Office of Federal Employees' Group Life Insurance shall determine, on the basis

of such evidence as it deems necessary, whether the deceased child was incapable of self-support because of a mental or physical disability which existed before becoming 22 years of age.

(b) In the event of an employee's election of family optional insurance under § 873.205, where the opportunity to elect is based solely on the acquisition of a child over age 21, the employee shall submit to the employing office at the time of filing the election, a certificate of the physician that the child is incapable of self-support because of a physical or mental disability which existed before the child became 22 years of age, and can be expected to continue for more than 1 year. The certificate shall include a statement of the name of the child, the nature of his/her disability, the period of time it has existed, and its probable future course and duration. The certificate shall be signed by the physician and show his/her office address.

(5 U.S.C. 8716)

[FR Doc. 80-40201 Filed 12-23-80; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 502]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 26, 1980–January 1, 1981. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: December 26, 1980.

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

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 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 October 14, 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 22, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navels deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is slow.

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

1. Section 907.802 is added as follows:

§ 907.802 Navel Orange Regulation 502.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period December 26, 1980, through January 1, 1981, are established as follows:

(1) District 1: 500,000 cartons;

(2) District 2: unlimited cartons;

(3) District 3: unlimited cartons:

(4) District 4: unlimited cartons.

(b) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" mean the same as defined in the marketing order.

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

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-40453 Filed 12-23-80; 12:25 pm]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 83

Screwworms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the approval of pesticides permitted by the Department for use in the treatment of livestock affected with screwworms. This action is necessary to delete the names of proprietary brands of pesticide products from the approved list, some of which are no longer marketed, and to provide information on the generic pesticides which are approved for such treatment of livestock. The effect of this action is to identify in the regulations only certain generic pesticides as effective for the treatment of animals affected with screwworms and to provide information on how to obtain the names of proprietary brands of such pesticides.

EFFECTIVE DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Floyd Smith, USDA, APHIS–VS, Sheep, Goat, Equine and Ectoparasites Staff, Room 733, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8233. The Final Impact Statement describing the options considered in developing final rule and the impact of implementing each option is available on request from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

On Friday June 6, 1980, there was published in the **Federal Register** (45 FR 38071–38072) a proposed rule concerning the approval of pesticides permitted by the Department for use in the treatment of livestock affected with screwworms. A 60-day comment period was provided which expired August 5, 1980.

A total of 3 comments were received as follows:

1. Request from Bayvet Division of Cutter Laboratories, Inc., to delete and/or replace proprietary name "Chemagro" with proprietary name "Cutter."

2. Request from Ralston Purina Company that Purina Wound Protector, EPA Registration Number 602–191, be made part of § 83.8(b), to 9 CFR Part 83.

3. Request from Carson Chemicals, Inc., that Screwworm Bomb, EPA Registration Number 2382–80 be made part of Section 83.8(b), to 9 CFR Part 83.

As proprietary names will no longer be used in the CFR after the effective date of this final rule, we will make the corrections and additions in Veterinary Services Memorandum 556.1, Supplement No. 1, which will be available to the public as provided in new footnote 2 of 83.8(b). Since there were no adverse comments on the proposed amendment, it will be implemented as proposed. The comments received confirm the need for such an amendment since the change of proprietary names and the introduction of new proprietary formulas is an ongoing process.

Accordingly, Part 83, Title 9, Code of Federal Regulations, is amended in the following respects:

1. Section 83.8(b) is revised to read:

§ 83.8 Permitted pesticides and approved procedures.

* * * * *

(b) Proprietary brands of coumaphos and ronnel, which are registered by the Environmental Protection Agency for use on livestock for screwworms under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. 135 et seq.), are permitted for the treatment of livestock for purposes of this part only when used in accordance with directions on the labels in connection with their registrations under the provisions of FIFRA.[2]

2. A footnote 2 to § 83.8(b) is added to read:

[2]Names of proprietary brands of the pesticides permitted by the Department for the treatment of livestock for purposes of this part may be obtained from the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Sheep, Goat, Equine, and Extoparasites Staff, Screwworm Eradication Program, Hyattsville, Maryland 20782. Veterinary Services personnel may not make any warranty or representations, express or implied, concerning the use of these pesticides and shall not be responsible for any loss, damage, or injury as a result of the use of any pesticide.

3. Section 83.8(c) is deleted in its entirety.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1 through 4, 33 Stat. 1264 and 1265, as amended (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141))

Done at Washington, D.C., this 19th day of December 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-40281 Filed 12-23-80; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 50, 70, 75, 150 and 170

Safeguards on Nuclear Material—Implementation of US/IAEA Agreement

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmation of Effective Date.

SUMMARY: The Commission is providing notice of the entry into force of the US/IAEA Safeguards Agreement on December 9, 1980 and of the effective date of regulations to implement that Agreement.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. E. Morgan, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Phone 301–443–5903).

SUPPLEMENTARY INFORMATION: On July 31, 1980, the Nuclear Regulatory Commission published in the **Federal Register** (45 FR 50705) a new Part 75 to Title 10 of the Code of Federal Regulations and amendments to 10 CFR Parts 40, 50, 70, 150, and 170 to implement the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (US/IAEA Safeguards Agreement). Further, on November 4, 1980, the Nuclear Regulatory Commission published in the **Federal Register** (45 FR 73012) minor clarifying amendments to 10 CFR Parts 70 and 75, with regard to reporting under the US/IAEA Safeguards Agreement.

The Notice accompanying the rules stated that the effective date of both of these rulemaking actions were contingent "Upon the Agreement's entry into force and publication of notice thereof in the **Federal Register.**" Notice is hereby given that on December 9, 1980, in accord with Article 24 of the Agreement, the United States provided written notification to the International Atomic Energy Agency that constitutional and statutory requirements of the United States for the entry into force of the US/IAEA Agreement had been met. Accordingly, the above referenced 10 CFR Part 75, changes thereto, and changes to 10 CFR Parts 40, 50, 70, 150, and 170 are effective on December 24, 1980.

Dated at Bethesda, Md. this 16th day of December, 1980.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 80-40117 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 503 and 504

[Docket No. ERA-R-80-17]

Calculation for the Cost of Using Alternate Fuels Under the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing this final rule which provides the methodology for the cost calculation to be used by new and existing facilities seeking certain exemptions from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA) (42 U.S.C. § 8301 *et seq.*).

EFFECTIVE DATE: This final rule shall become effective. January 23, 1981.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, Room B–110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–4055.

Stephen M. Stern (Office of Regulatory Policy), Economic Regulatory Administration, Department of Energy, Room 7002, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3217.

Robert L. Davies (Office of Fuels Conversion), Economic Regulatory Administration, Department of Energy, Room 3002, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3649.

Henry K. Garson (Office of General Counsel), Department of Energy, Room 6B–178, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–2967.

SUPPLEMENTARY INFORMATION:

I. Background

II. Comments

(a) Cost calculation methodology

(b) Specification of discount rates
(c) Fuel inventories
(d) Future fuel prices
(e) Operation, maintenance, and fuel costs
(f) Useful life
(g) Consultation with State regulatory authorities
(h) Substantially exceeds premium
(i) Natural gas price
(j) Allowance for funds used during construction
(k) Revenue requirements
(l) Longer lead time required for a coal facility than an oil facility
(m) Replacement facility
(n) Other technical changes
(o) Miscellaneous items

III. Procedural Matters

I. Background

Proposed rules implementing Sections 211(a)(1), 212(a)(1)(A), 311(a)(1), and 312(a)(1)(A) of FUA, which provide for exemptions from the Act's prohibitions for facilities which demonstrate that the cost of using an altenate fuel "substantially exceeds" the cost of using imported petroleum, were published on November 17, 1978, at 43 FR 53974, 54005 and 54030, and on January 29, 1979, at 44 FR 5808, 5820 and 5840 and public comments were solicited. An interim rule was subsequently published on May 17, 1979, at 44 FR 28950, 28979 and 28999, and on July 23, 1979, at 44 FR 43176, 43191 and 43209, and additional comments were requested.

After considering the comments received, ERA determined that it would be inappropriate to adopt the interim rule, and the cost calculation provisions of the interim rule were subsequently revoked. ERA issued a Notice of Proposed Rulemaking (NOPR) on June 23, 1980 (45 FR 42190) proposing a new methodology for the cost calculation provisions which are being adopted in final form here. A public hearing was held on July 31, 1980. The written comment period, originally scheduled to close on August 20, 1980, was extended to October 20, 1980.

II. Comments

(a) *Cost calculation methodology.*— The overwhelming majority of commenters favored the use of the net proposed present value technique to compare the cost of using imported petroleum to the cost of using an alternate fuel because this method closely follows private sector investment decision evaluation procedures. ERA has adopted this approach. For additional discussion of this methodology, see the preamble to the NOPR (45 FR 42191, June 23, 1980).

(b) *Specification of discount rates.*— The statutory definition of cost (Section 103(a)(20) of FUA) requires that the cost calculation procedures use a discount rate to determine the cost of capital. In the NOPR, the discount rate was tentatively set—in real terms without inflation—at 7.7 percent for major fuel burning installations (MFBIs) and at 2.9 percent for powerplants.

These rates are the means of samples of firms' real, after tax, weighted average marginal costs of capital as determined in a study performed for ERA. The study addressed a sample of 118 Class A and Class B utilities and a sample of 54 energy-intensive industrial firms. The mean of the utility sample was 2.9 percent per annum, and the mean of the industrial sample was 7.7 percent per annum. ERA decided to use this particular study as a basis for setting the discount rates because it focused on the population deemed by ERA to be most likely affected by FUA. A summary of the study was published in the **Federal Register** (44 FR 43222–23, July 23, 1979). ("Costs of Capital and Rates of Return for Industrial Firms and Class A & B Electric Utility Firms," prepared for the Department of Energy Division of Coal Regulations by Ernst & Ernst, June 1979.)

Note.—ERA has received numerous comments that ERA's 2.9% (for utilities) and 7.7% (for MFBIs) discount rates are much lower than those employed by industry. The perceived difference is because ERA's presumed discount rates are after tax and do not include inflation, whereas common industrial usage frequently includes both of these factors. For typical companies, an industrial discount rate of 20.5% (including taxes and inflation) and ERA's 7.7% (excluding taxes and inflation) would be equivalent, as are a utility discount rate of 16.8% and ERA's 2.9%. [The typical company used in the above illustration is assumed to have: (1) 27.0% cost of common equity, (2) debt/equity ratio of 1.0, (3) cost of debt of 14%, (4) no preferred equity, (5) 46% taxes, and (6) 9.6% inflation (based on the GNP deflator from 3rd quarter, 1979 to the 3rd quarter, 1980). The typical utility used in the above illustration is assumed to have: (1) 22.3% cost of common equity, (2) debt/equity ratio of 2.0, (3) 14% cost of debt, (4) no preferred equity, (5) 46% taxes, and (6) 9.6% inflation.]

Many commenters criticized the use of these discount rates and the methodology used to compute them. The most significant criticisms were that (i) individual firms should be permitted to use their own discount rates rather than a national average, (ii) these discount rates are not appropriate for use by government and municipal facilities, and (iii) ERA should have used an inflation indicator other than the previous year's GNP deflator to compute real discount rates.

In light of these comments, ERA has modified the rule to permit a petitioner to use either the specified 7.7% or 2.9% discount rates, whichever is appropriate, or the firm's actual cost of capital as computed by the methodology contained in Appendix I to the final rule for existing facilities (45 FR 53711–53712, August 12, 1980). The purpose of this modification is to permit the use of firm-specific discount rates and to recognize the fact that different facilities have different costs of capital.

Under the NOPR, ERA proposed using the previous year's GNP deflator as the appropriate measure to determine the expected rate of inflation for use in computing real costs of capital. Some commenters suggested that an estimated rate of inflation computed over the equipment's useful life should be used. Others suggested that a weighted average of several years' inflation should be used. These commenters did not, however, furnish supporting evidence or data sufficient to implement the suggested proposals or to persuade ERA that their proposals were clearly superior to ERA's. ERA will continue to examine and may initiate, if appropriate, a further rulemaking on accounting for inflation and computing the cost of capital in the coming year.

(c) *Fuel inventories*

In the NOPR, ERA proposed specific inventory levels for powerplants and presumptive inventory levels for installations to be used for purposes of the cost calculations (45 FR 42192, June 23, 1980).

ERA received several comments on the actual levels of inventory specified. Some commenters stated that while a 21 day supply is sufficient for oil inventories, industrial installations generally stock a 30 to 60 day supply of coal because the coal supply is more susceptible to interruptions such as railroad problems, strikes, and mine shutdowns. One commenter suggested that a 45 day supply for oil and a 90 day supply for coal are typical. Without regard to the fact that utility inventories may be specified by a state regulatory authority, ERA recognizes from these comments that all inventory levels may not be industry or firm specific.

Some commenters suggested that all fuel inventory levels, not just those for installations, should be rebuttable with appropriate evidentiary presentations. ERA agrees and has changed the cost calculation requirements to provide for an alternative to specified fuel inventory level guidelines. However, the petitioner must use equivalent fuel supply inventories. Under the rules issued today, a petitioner will be permitted to use these guidelines or it's own firm-specific inventory requirements upon

presentation of appropriate supporting evidence to ERA.

Some commenters indicated that fuel inventories of 78 days for powerplants which use natural gas are excessive because natural gas is not generally stored on the site. ERA agrees and has revised the regulation to specify no required fuel inventory for natural gas fired facilities if the gas supply is uninterruptible. if the gas supply is interruptible, however, an appropriate inventory of back-up fuel must be included.

(d) *Future fuel prices*

In the NOPR, ERA proposed two methodologies to incorporate expected changes in future fuel prices for the purposes of the cost calculation. One method would involve adding a fixed annuity to the price of oil based upon projected future increases in the price of oil relative to that of coal and other alternate fuels (see Appendix II–B of the NOPR). The other proposed method would permit petitioners to use either the explicit price trajectories for oil and alternate fuels or a four dollar per barrel maximum fixed annuity (see Appendix II–A of the NOPR).

To develop the price trajectories and the annuity proposed in Appendix II–A and Appendix II–B, ERA examined a variety of fuel price projections and then calculated the equivalent annuities as described in the NOPR (45 FR 42192–7, June 23, 1980). To determine the change in real imported oil price relative to that of coal, ERA assumed the standard cost calculation parameters associated with a new installation going on line in 1980, having a 40 year useful life, and using a 7.7 percent discount rate.

ERA evaluated five forecasts made by three differenct sources: (1) Energy Information Administration (EIA) of DOE: high, medium, and low scenarios; (2) Data Resources, Inc. (DRI); and (3) Wharton Econometric Forecasting Associates, Inc. (Wharton). The results of the evaluation are contained in the NOPR.

ERA's use of a single set of trajectories in Appendix II–A was criticized as too general. Commenters suggested that there is sufficient regional variability and uncertainty in the projections for both coal and oil prices to warrant the use of fuel- and region-specific or firm-specific trajectories. Several commenters also suggested that the trajectories be expressed by a range of values to accommodate forecast uncertainty.

One commenter suggested that allowing the petitioner to use either the fixed annuity or the explicit trajectories (proposed in Appendix II–A) was preferable because it limited the effect of uncertain trajectories. The sole use of the fixed annuity method (proposed in Appendix II–B) was universally rejected by commenters because it fails to accommodate facilities with short remaining useful lives.

ERA has adopted Appendix II–A as Appendix II and deleted Appendix II–B. ERA recognizes that establishing realistic trajectories for oil, coal, and other alternate fuels is an uncertain undertaking. Consequently, ERA has decided to mitigate this uncertainty by offering petitioners the choice of using either the specified set of trajectories or the fixed annuity method as designated by ERA. ERA is aware of the potential importance of regional coal trajectories. However, ERA does not have sufficient data to publish such trajectories at this time. ERA is hereby soliciting comments on the need for and a method to calculate regional coal price trajectories. ERA intends to review the specified set of trajectories—both oil and coal—and the designated fixed annuity value periodically. Any changes in these values will be effected only after appropriate notice and an opportunity for public comment.

(e) *Operation, maintenance, and fuel costs*

(1) *Powerplants*

ERA received comments on the proposed methods for computing annual cash outlays for operation, maintenance, and fuel costs of powerplants. These costs could be calculated through use of (i) an economic dispatch analysis, (ii) a 70% capacity factor, or (iii) an average annual capacity factor over a five year period (for existing powerplants only). In response to comments, ERA has deleted the use of the five year average capacity factor method for existing powerplants.

A number of commenters felt that the required dispatch analysis placed an unreasonable burden on petitioners because ERA required that analysis to cover the utility's electric region rather than its service area. They also maintained that this type of dispatch analysis would be virtually impossible for small utilities to accomplish and would not reflect the actual dispatch of units in the system.

Further, one commenter suggested that Section 103(a)(20) of FUA clearly contemplated that conversion costs would be analyzed based on the dispatching system actually used by the utility in operating its powerplants.

ERA has considered the comments on which service area should be used for the dispatch analysis and has decided to change the rule to specify that the area which must be used in the dispatch analysis is the petitioner's dispatch area including all anticipated exchanges of energy with other utilities and powerpools. ERA has also modified the rule to allow the petitioner to conduct the dispatch analysis for a representative (not atypical) year to determine a unit's proposed capacity factor when burning an alternate fuel.

Many commenters criticized ERA's 70% capacity factor, suggesting that the 70% capacity factor is too high, particularly for existing facilities, and fails to recognize the decline in capacity factor with increasing unit age.

ERA emphasizes that this 70% capacity factor would only be used as an alternative to a dispatch analysis—which has been considerably simplified in the final rule. ERA believes that this capacity factor is reasonable since the availability of coal fired powerplants is generally greater than 70%. Since annual capacity factor is determined by both powerplant availability and dispatch, 70% is a reasonable expectation of the annual capacity factor.

(2) *Powerplants and installations*

The proposed rule required that a certification, subject to penalties, be made that (a) the proposed powerplant would not use more oil than the dispatch analysis showed it would use, or (b) the proposed installation would not use more oil than the maximum which could have been specified and still receive an exemption.

In response to comments, ERA agrees that imposing this provision by rule is not necessary and has eliminated the certification requirement.

(f) *Useful life*

The NOPR specified a presumptive useful life of 40 years for MFBIs and 35 years for non-nuclear powerplants. A useful life of 40 years was specified for nuclear powerplants.

ERA received many comments criticizing these presumptive useful lives. Some commenters suggested that ERA revise the rule and adopt the concept of the "economic useful life" as is being considered by Congress in current tax reform efforts. This would take into consideration such things as technological obsolescence which could become increasingly significant as new alternate fuels become commercially available.

Another commenter suggested that boilers do not actually have useful lives of 40 years, but are essentially rebuilt to attain 40 year life spans. It was suggested that ERA should allow use of the period of time the boiler is initially scheduled to be in operation as part of a facility (planned facility life) as its useful life, rather than setting 40 years as a rebuttable presumption.

One commenter reviewed a report entitled "Major Fuel Burning Installation (MFBI) Combustion Age Study" prepared by Radian Corporation, a DOE contractor. The commenter concluded that the report did not justify a 40 year useful life. While the study does not establish a 40 year useful life for installations, it does not conclude otherwise. What it does conclude is that useful life is based primarily on the care, maintenance, and use of the facility.

ERA has adopted useful life guidelines of 40 years for MFBIs and 35 years for non-nuclear powerplants in the final rule which ERA believes is the reasonable expected physical lives of these facilities. ERA continues to believe that the relevant lifetime is an approximation of the physical life of the facility and not some other measure such as economic or tax life. Accordingly, a petitioner will be permitted to use the useful life guidelines as set by ERA or present evidence as to why a different useful life should be used. ERA will accept evidence related only to the projected physical useful life of the facility.

(g) *Consultation with State regulatory authorities*

One commenter criticized the consultation provisions of the proposed rule as failing to provide, in cost determinations involving powerplants, a sufficient role for consultation with State regulatory authorities in establishing a working definition of costs or in formulating the cost test rule itself. The commenter also pointed out that the rule, as written, requires consultation only on exemption requests and not on proposed prohibition orders.

With regard to the role of State regulatory authorities in defining and determining the cost test rules for powerplants, all interested parties, including the various State authorities, have had ample notice and opportunity for public comment on each item in the proposed cost calculations in this rulemaking.

With regard to consultation on a case-by-case basis, ERA also welcomes and encourages the participation of State regulatory agencies in the exemption process, and generally consults with the various State authorities on a case-by-case basis. ERA has always submitted individual petitions to the appropriate State authority and allowed an opportunity to comment and consult, where appropriate, in individual cases to satisfy the requirement of FUA. In addition, ERA will also submit proposed prohibition orders in individual cases to State regulatory authorities for comment. However, ERA does not believe that this procedure is necessarily required to be set forth in the regulations and has therefore eliminated the consultation provision in the final rule.

(h) *Substantially exceeds premium*

Many commenters criticized the proposed substantially exceeds premium which ERA has chosen to limit to $1 per barrel. Some suggested that although it was an improvement over the social costs and benefits analysis under the interim rule, the substantially exceeds component of the cost calculation was still impermissibly based on the social costs of continuing to burn oil or the social benefits of converting to coal. Furthermore, commenters maintained that ERA is mixing social costs with private costs, a method which they alleged is contrary to FUA, stating that Section 103(a)(20), the statutory definition of cost, emphasizes private costs rather than social costs.

Other commenters suggested that the substantially exceeds premium should be zero. Still another commenter was concerned that assigning a premium was a way of imposing an import fee without revenue gains, a practice which he asserted is not authorized by FUA.

In contrast, another commenter suggested that a $1 per barrel premium was not in consonance with the current prevailing "social risk" of using imported petroleum. He maintained that a premium somewhere between $4 and $10 would be more appropriate considering the great risks of supply disruption, the low volume in strategic storage, and the lack of adequate programs to promote import reductions or respond to supply disruptions.

For the reasons set forth in the NOPR, ERA continues to believe that a $1 per barrel premium is appropriate. In addition, ERA would like to clarify some apparent confusion with respect to the substantially exceeds premium. ERA believes that the costs to build, operate, and maintain a facility are required by the statute to be private costs. ERA does not believe that the premium required to use imported petroleum as set forth in the statutorily mandated substantially exceeds standard is a private cost, but rather represents the social value to the Nation, as embodied in the substantially exceeds premium, of not burning a barrel of imported petroleum. This is not a cost item per se, but reflects a judgment of the value, in dollars, of complying with the statutory requirement of not using imported petroleum unless the cost of an alternative fuel substantially exceeds the cost of using imported petroleum.

(i) *Natural gas price*

Some commenters criticized ERA for proposing that natural gas be priced at the Btu equivalent price of #6 residual fuel oil which meets appropriate local air quality standards. The commenters suggested that ERA in its proposal made no adjustment for the obvious and considerable differences in the prices of petroleum and natural gas. In addition, commenters stated that the proposal did not take into account the fact that the facility may be designed to burn only natural gas and therefore the price of fuel actually consumed at the facility should be used in the cost calculations.

ERA has reviewed the comments and has decided not to change its treatment for pricing natural gas because FUA specifically requires that a comparison be made between the cost of burning alternate fuel and the cost of burning imported petroleum (Sections 211(a)(1), 212(a)(1)(A), 311(a)(1), and 312(a)(1)(A)). The petroleum replacement product for natural gas is generally #6 residual fuel oil or in some instances #2 distillate. Since #6 residual oil is lower priced than #2 distillate, it would be to the advantage of a petitioner to use #6 residual oil price. Therefore, ERA will require the petitioner who wants to burn natural gas to use the price of the #6 residual fuel oil which meets the air quality standards in his area as the fuel price on an equivalent Btu basis.

(j) *Allowance for funds used during construction (AFUDC)*

Several commenters stated that AFUDC is not accounted for in the cost test calculations. AFUDC is the net cost of borrowed funds used during the period of construction and includes a reasonable rate of return on other funds when so used.

The cost calculation treats cash flows as they occur, discounted to their present value. Thus in our view, the net present value calculation in the cost calculation implicitly treats AFUDC by recognizing the timing of capital outlays while the plant is under construction.

Because the net present value calculation employed in the cost test NOPR implicitly treats AFUDC in the discount rate, it would be improper for ERA to provide further for AFUDC.

(k) *Revenue requirements*

Several commenters suggested that ERA use a revenue requirements model as the FUA cost calculation for utilities. One commenter observed that a revenue requirements calculation will give results consistent with the net present value method used by ERA. Another commenter suggested that ERA use a levelized annual revenue requirements model. Still another commenter observed that the ERA methodology is essentially the computation of the

present worth of future revenue requirements.

Based on a review of the comments received, we believe there is no significant difference between the basic methodology used by ERA and those suggested by commenters. Therefore, ERA has decided a change in the basic methodology is unwarranted.

(l) *Longer lead time required for coal facility than oil facility*

One commenter thought that ERA should consider the impact of differentials in construction time for a facility. Generally coal-fired facilities require a longer lead time for construction, which could be an important consideration in fuel selection. ERA believes that firms usually account for longer lead times in their planning process. Therefore, ERA will only consider the impact of longer lead times in extraordinary circumstances where a petitioner clearly demonstrates these circumstances could not have been anticipated in the planning process. In such an exceptional case, the effect of a longer lead time can be incorporated in the cost calculation by allowing the inclusion of such items as purchased energy or rental units.

(m) *Replacement facility*

One commenter stated that in the proposed rule on the cost calculation for existing facilities, ERA had in essence negated the exemption provisions of FUA by requiring that petitioners consider the cost of a replacement facility if a compatible alternate fuel is not available for an existing unit. This comment is particularly significant with regard to existing natural gas fired powerplants, which are subject to the 1990 prohibitions on the use of natural gas (Section 301(a)(1) of FUA).

Section 312(a)(1)(A) of FUA specifies the criteria for granting permanent exemptions for existing facilities. It states that a permanent exemption shall be granted whenever "an adequate and reliable supply of coal or other alternate fuels of the quality necessary to conform with the design and operational requirements for use as a primary energy source will not be available to *such power plant* . . . at a cost . . . which, based on best practical estimates, does not substantially exceed the cost . . . of using imported petroleum as a primary energy source *during the remaining useful life of the powerplant* . . ." (Emphasis added.) This statutory language appears to support the position of the commenter that comparing the cost of a replacement facility utilizing an alternate fuel to the cost of continuing to operate a natural gas powerplant is inappropriate, since the statute refers to the cost of using coal or other alternate fuel in "such powerplant" during a period of remaining useful life.

The NOPR required an analysis of replacement capacity using alternate fuels, notwithstanding the fact that the existing facility was not itself technically capable of burning the alternate fuels. The NOPR required that the cost associated with an alternate fuel fired replacement facility of equal design be compared to the cost of continued operation of the existing unit on natural gas.

ERA believes that these existing natural gas fired powerplants are technically capable of burning alternate fuels, including high-Btu gas from coal. The question therefore is not one of technical capability but rather whether alternate fuels will be available to the facility. It is further the view of ERA that it will be difficult, if not impossible, for a petitioner at this time to demonstrate that "despite diligent good faith efforts . . . it is unlikely that an adequate supply of coal or other alternate fuel . . . will not be available. . . ." (Section 312(a)(1)(A) of FUA) for any meaningful period of time in the future. For natural gas fired facilities, therefore, ERA suggests that permanent exemptions under Section 312(a) of FUA, lack of alternate fuel supply, site limitations, or environmental requirements, not be applied for at this time. In the alternative, petitioners may wish to seek temporary exemptions until such time as the statutory criteria for permanent exemption under Section 312 of FUA can be satisfied. Temporary exemptions are available for existing facilities which can demonstrate compliance with the criteria contained in Section 311 of FUA. In view of the limited life of a temporary exemption, ERA has determined that the cost calculation does not require consideration of the costs asssociated with a replacement facility for the purposes of this exemption.

The cost calculation does permit the comparison to include the costs of using alternate fuels in a replacement facility where the petitioner desires to do so for a temporary exemption. ERA has not, however, made a final decision on whether petitioners seeking a permanent exemption must compare the cost of using an alternate fuel in a replacement facility. ERA will continue to study this issue and will adopt its decision by rule.

(n) *Other technical changes*

The proposed cost test equations included a term for the marginal Federal income tax rate which was specified as constant from year to year. ERA realizes that a firm's marginal tax rate may vary over the useful life of the facility and therefore has redefined the term so that it may vary from year to year to reflect anticipated rates.

One commenter suggested that the powerplants being compared should have the same net continuous capability (ERA assumes the commenter meant unit output, not input), rather than design capacity (turbine generator nameplate rating). ERA agrees that the difference between net continuous output and design capacity could be significant for some powerplants. Therefore, ERA has revised the rule to allow the petitioner to compare two powerplants with either the same design capacity or the same maximum sustained energy per unit of time that could be produced.

Several commenters suggested that § 503.6(d)(11) of the proposed rule which discussed uncertainty and risk in the cost estimates should be made more explicit, and that allowances should be made for contingencies. ERA believes that risk can be quantified in the cost calculation procedure and therefore sees no reason to make any changes to the rule in this regard.

One commenter conceived of a case where the cost calculation could extend over a fifty year period and asked whether the price and inflation indices (Table II–1 in Appendix II) could be extended to fifty years. Accordingly, ERA has extended the indices to the year 2030.

(o) *Miscellaneous items*

ERA has modified §§ 503.6(b)(1) and 504.12(b)(1) of the proposed rule to make it clear that the petitioner need only consider delaying the use of alternate fuel if the cost estimates that the petitioner supplies, as prescribed, are expected to change over the first ten years of the exemption. This expectation need only be based upon the information which exists at the time the petition is submitted.

When considering Federal income taxes in the calculation, the relevant tax credits, depreciation methodology, and marginal Federal income tax rates for a specific exemption will be those prescribed by Federal law in effect, or which are known with certainty will be in effect at the time the decision is rendered. For example, if an investment tax credit is due to expire in a certain year, the petitioner must treat it as if it will expire in that year. ERA has modified §§ 503.6(d)(6) and 504.12(d)(7) of the proposed rule to clarify this treatment of Federal income taxes.

One commenter suggested that not including the capital cost of lost capacity was equivalent to not recognizing the economic consequences of losing an important asset. However,

one should bear in mind that the inclusion or exclusion of the capital cost due to derating is simply an analytical option to present the most favorable case for the petitioner and is not meant to actually deprive a petitioner of a valuable asset. If a petitioner does not need to consider the capacity lost due to derating to obtain the exemption, excluding those costs will simplify the calculation. As previously set forth in § 504.12(d)(3) of the proposed rule, the cost calculation for an existing facility provides for the optional inclusion of capital costs due to derating.

III. Procedural Matters

A final regulatory analysis relating to the cost calculations as contemplated by Executive Order No. 12044 is attached to this final rule.

This final rule must be submitted to the Office of Management and Budget (OMB) for clearance under the provisions of the Federal Reports Act. Any compliance with the data collection provisions of this final rule may require revision or additions as a result of OMB's action.

(Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); Executive Order 12009 (42 FR 46267, September 15, 1977))

In consideration of the foregoing, §§ 503.6 and 504.12, as amended, of Subchapter E of Chapter II, Title 10 of the Code of Federal Regulations entitled "Alternate Fuels" are hereby adopted as a final rule and are effective January 23, 1981.

Issued in Washington, D.C., on December 17, 1980

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

§ 503.6 Cost calculations for new powerplants and installations.

(a) *General.*

(1) This calculation compares the cost of using alternate fuel to the cost of using imported petroleum. It must be performed for each alternate fuel and/or alternate site that the petitioner is required to examine.

(2) The cost of using an alternate fuel (see the definition in § 500.2) as a primary energy source will be deemed to substantially exceed the cost of using imported petroleum if the difference between the cost of using alternate fuel and the cost of using imported oil is greater than zero.

(3) There are two comparative cost calculations—a general cost test and a special cost test. Both take into consideration cash outlays for capital investments, annual expenses, and the effect of depreciation and taxes on cash flow. To demonstrate eligibility for a permanent exemption, a petitioner must use the proecedures specified in the general cost test (paragraph (b) of this section). To demonstrate eligibility for a temporary exemption, the petitioner may apply the procedures specified in either the general cost test or the special cost test (paragraph (c) of this section).

(4) The general cost test differs from the special cost test with respect to (i) the time period over which costs are calculated, and (ii) the types of fuel-consuming equipment being considered. For the general cost test, the petitioner must compare the cost of using an alternate fuel in an alternate fuel capable unit with the cost of using imported petroleum or natural gas in an oil/natural gas capable unit over the lifetime of these facilities. For the special cost test, the petitioner must compare the cost of using alternate fuel against that of using imported petroleum/natural gas in an alternate fuel capable unit over the period of the desired temporary exemption.

(b) *Cost calculation—general cost test.*

(1) A petitioner may be eligible for a permanent exemption if he can demonstrate that the cost of using an alternate fuel from the first year of operation substantially exceeds the cost of using imported petroleum. Unless the cost estimates as prescribed below will not materially change during the first ten years of operation of the unit (given the best information available at the time the petition is filed), the petitioner must also demonstrate that the cost of using an alternate fuel beginning at any time within the first ten years of operation and using imported petroleum or natural gas until such time (*i.e.*, delayed use of alternate fuel) would substantially exceed the cost of using only imported petroleum.

(2) The petitioner would only be eligible for a temporary exemption if the computed costs of delayed alternate fuel use, commencing at the start of the second through eleventh years of operation, do not always substantially exceed the cost of using only imported petroleum. The length of the temporary exemption would be the minimum period from the start of operation in which the cost of using alternate fuel substantially exceeds the cost of using imported petroleum.

(3) To conduct the general cost test, calculate, the difference (DELTA) between the cost of using an alternate fuel (COST(ALTERNATE)) and the cost of using imported petroleum (COST(OIL)) using Equations 1 through 3 below and the comparison procedures in paragraph (b)(5) of this section.

EQ 1 $\quad DELTA = COST(ALTERNATE) - COST(OIL)$

where COST(ALTERNATE) and COST(OIL) are determined by:

EQ 2 $$COST = I + \sum_{i=1}^{N} \frac{(OM_i + FL_i)(1-t_i)}{(1+k)^i}$$

and I (capital investment) is:

EQ 3 $$I = \sum_{i=-g}^{N} \frac{I_i - ITC_i - S_i - t_i(DPR_i)\left(\frac{IX_e}{IX_i}\right)}{(1+k)^i}$$

(4) The terms in Equations 2 and 3 are defined as follows:

i = Year. i is a specified year either before year 0 or after year 0. Year 0 is the year before the unit becomes operational. For example, in the third year before the unit becomes operational, i would equal −2, and in the third year following commencement of operations of the unit, i would equal +3. Years are represented by 52 week periods prior to or following the date on which the unit becomes operational. Outlays before the unit becomes operational are future valued to the year before the unit becomes operational (year 0), and outlays after the unit becomes operational are present valued to the year before the unit becomes operational. Year 0 must be the same for the units being compared.

g = The number of years prior to the year before the unit becomes operational (year 0) that (1) a cash outlay is first made for capital investments, or (2) an investment tax credit is first used—whichever occurs first.

N = The useful life of the unit (see paragraph (d)(5) of this section).

I_i = Yearly cash outlay (in dollars) from the year outlays first occur to the last year of the unit's useful life for capital investments. (See paragraph (d)(2) of this section for the items that must be included.)

OM_i = Annual cash outlay in year i (in dollars) for all operations and maintenance expenses except fuel (*i.e.*, all non-capital and non-fuel cash outlays caused by putting the capital investments (I) into service). This may include labor, materials, insurance, taxes (except income taxes), etc. (See paragraph (d)(3) of this section.)

S_i = Salvage value of capital investment (in dollars) in year i.

FL_i = Annual cash outlay for delivered fuel expenses (in dollars) in year i. (See paragraph (d)(3) of this section for FL_i calculation instructions and Appendix II of these regulations for the procedures to determine fuel price.)

k = The discount rate expressed as a fraction (see paragraph (d)(4) of this section).

ITC_i = Federal investment tax credit used in year i resulting from capital investments (see paragraph (d)(6) of this section).

DPR_i = Depreciation in year i resulting from capital investments (see paragraph (d)(6) of this section).

t_i = Marginal income tax rate in year i (see paragraph (d)(6) of this section).

IX_i = Inflation index value for year i (see Table II-1 in Appendix II).

IX_e = Inflation index value for the year e, the year before the asset is placed in service.

(5) The step-by-step procedure that follows shows the comparison that the petitioner must make. It outlines the equipment, fuel, and time comparisons.

(i) Compute the cost of using an alternate fuel (COST (ALTERNATE)) in an alternate fuel-capable unit throughout the useful life of the unit using Equations 2 and 3.

(ii) Compute the cost of using oil or natural gas (COST (OIL)) in an oil or natural gas-fired unit throughout the useful life of the unit using Equations 2 and 3.

(iii) Using Equation 1, compute the difference (DELTA) between COST(ALTERNATE) and COST(OIL). If the difference (DELTA) is less than or equal to zero, a petitioner is not eligible for a permanent or temporary exemption using the general cost test and need not complete the remainder of the general cost test calculation. However, he still may be eligible for a temporary exemption using the special cost test (paragraph (c) of this section). If the difference (DELTA) is greater than zero and if the cost estimates will not materially change during the first ten years of operation (given the best information available at the time the petition is filed), the petitioner has completed the test and is eligibile for a permanent exemption. However, if the costs will change during the first ten years, the petitioner must complete the remainder of the general cost test—the delayed use calculations which follow.

(iv) Recompute COST(ALTERNATE) with Equations 2 and 3, assuming that an alternate fuel is not used as the primary energy source until the start of the second year of operation and that imported petroleum or natural gas is used for the first year of operation. All cash outlays should reflect postponed use of alternate fuel.

(v) Successively recompute COST(ALTERNATE) with Equations 2 and 3, assuming that the alternate fuel use is postponed until the start of the third year, fourth year, and so on, through the beginning of the eleventh year of operation (with imported petroleum or natural gas used in the years preceding alternate fuel use).

(vi) Compute the difference (DELTA) between each of the ten COST(ALTERNATE)s calculated in (iv) and (v) above and the COST(OIL) calculated in (ii) above.

(vii) If *all* the DELTAs computed in (iii) and (vi) above are greater than zero, the petitioner is eligible for a permanent exemption. If one or more of the DELTAs is less than or equal to zero, he is eligible for a temporary exemption for the period beginning at the start of the first year of operation and terminating at the beginning of the first year in which a DELTA is zero or less.

(c) *Cost calculations—special cost test.*

(1) A petitioner may be eligible for a temporary exemption if he demonstrates that the cost of using an alternate fuel in an alternate fuel capable unit will substantially exceed the cost of using imported petroleum or natural gas in an alternate fuel capable unit over the period of the proposed exemption. The period of the proposed temporary exemption may not exceed ten years. The petitioner must demonstrate that the cost of using an alternate fuel substantially exceeds the cost of using imported petroleum for the first year of operation, the first two years of operation, and so forth, through the period of the proposed exemption. ERA will limit the duration of a temporary exemption to the shortest time possible.

(2) To conduct the test, calculate the difference (DELTA) between the cost of using an alternate fuel (COST(ALTERNATE)) and the cost of using imported petroleum (COST(OIL)) using Equations 4 and 5 below, Equation 3 (paragraph (b)(3) of this section), and the comparison procedures in paragraph (c)(4) of this section.

EQ 4 DELTA = COST (ALTERNATE)—COST (OIL)

where COST(ALTERNATE) and COST(OIL) are determined by:

$$\text{EQ 5} \qquad \text{COST} = I \times \frac{\sum_{i=1}^{P} (1+k)^{-i}}{\sum_{i=1}^{N} (1+k)^{-i}} + \sum_{i=1}^{P} \frac{(OM_i + FL_i)(1-t_i)}{(1+k)^i}$$

Capital investment (I) is calculated with Equation 3 (paragraph (b)(3) of this section).

(3) The terms in Equation 5 are the same as those in Equation 2 with the addition of P, the length of the proposed temporary exemption in years. (See paragraph (b)(4) of this section for other terms.)

(4) The step-by-step procedure that follows shows the comparisons which must be made.

(i) Using Equation 5, compute the cost of using an alternate fuel (COST(ALTERNATE)) in an alternate fuel-capable unit assuming the length of the proposed exemption in years is one year.

(ii) Likewise, compute the cost of using oil or natural gas (COST(OIL)) in an alternate fuel and imported petroleum or natural gas-capable unit assuming the length of the proposed exemption is one year.

(iii) Compute the difference (DELTA) between COST (ALTERNATE) and COST(OIL) using Equation 4.

(iv) Repeat the calculations made in (i), (ii), and (iii) above, assuming the length of the proposed exemption is two years, three years, four years, and so on, up through the period of the proposed exemption.

(v) A petitioner is eligible for a temporary exemption for the period beginning at the start of the first year of operation and terminating at the beginning of the first year in which a DELTA is zero or less.

(d) *Information on parameters used in the calculations.*

(1) All estimated expenditures, except fuel, shall be expressed in real terms (unadjusted for inflation) by using the prices in effect at the time the petition is submitted. Instructions for fuel price calculations are contained in Appendix II.

(2) Capital investment yearly cash outlays (I_i), must include all items that are capital investments for Federal income tax purposes. All purchased equipment that has a useful life greater than one year, capitalized engineering costs, land, construction, environmental

offsets, fuel inventory, transmission facilities, piping, etc., that are necessary for the operation of the unit must be included. However, an item must only be included if a cash outlay is required after the decision has been made to build the unit; sunk costs must not be included (*e.g.*, if the firm owns the land, its purchase price may not be included).

Note.—The guidelines for the fuel inventory for powerplants not using natural gas shall be: (a) all powerplants with only steam driven turbines—78 days, (b) all powerplants with only combustion turbines—142 days, (c) all powerplants with combined cycles—both steam driven turbines and combustion turbines—142 days. The fuel inventory for installations not using natural gas shall be the greater of: (1) 21 days fuel supply, or (2) sufficient fuel to fill sixty (60) percent of the storage volume where whatever amount is chosen is equivalent in terms of number of days supply for both the base case and the alternate fuel case being compared. The fuel inventory for all facilities using natural gas shall be zero unless the gas supply is interruptible in which case an appropriate inventory of back-up fuel must be included. The petitioner may utilize alternative fuel inventories by demonstrating through engineering or process requirements evidence that another level of inventory is appropriate. However, the petitioner must use equivalent fuel supply inventories as described above. Fuel supplies must be computed using annual fuel consumption rates.

(3)(i) The annual cash outlays for operations and maintenance expense (OM_i) and fuel expense (FL_i) for a powerplant may be computed by one of the following three methods; however, the one chosen must be consistently applied throughout the analysis.

(A) Assume the energy produced by the powerplant equals seventy (70) percent of design capacity times 8760 hours for each year during the life of the powerplant, and compute cash outlays for operations, maintenance, and fuel expenses for the powerplant.

(B) Economically dispatch the new powerplant. The cash outlays for operations, maintenance, and fuel expenses of all powerplants being dispatched (where oil and natural gas are priced according to the procedures of Appendix II) are the corresponding expenses for the purpose of the cost calculation. The dispatch analysis area must be that area with which the firm currently dispatches, anticipates dispatching, and will be interconnected. It must also include all anticipated exchanges of energy with other utilities or powerpools. The outlays for operations, maintenance, and fuel may also be estimated using a methodology that incorporates the benefits of economically dispatching units and provides consistent treatment in the alternate fuel and oil or natural gas cases being compared.

(C) Use a dispatch analysis to project the energy produced by the powerplant for a representative (not atypical) year of operation when consuming an alternate fuel. Compute the cash outlays for operations, maintenance, and fuel expenses for the powerplant based upon the level of energy production estimated for the representative year. The dispatch analysis and fuel expenses for the cost calculation must include oil and natural gas priced according to the procedures of Appendix II.

(ii) When computing the annual cash outlays for operations and maintenance expense (OM_i) and fuel expense (FL_i) for an installation, specify the firing rates and the length of time each firing rate will be maintained.

(4) The discount rate (k) for analyses of powerplants is 2.9 percent or that which is computed as specified in Appendix I (45 FR 53711–2, August 12, 1980). The discount rate (k) for analyses of installations is 7.7 percent or that which is computed as specified in Appendix I. The inflation index (IX) is shown in Table II–1 of Appendix II. ERA will modify these specified rates from time to time as required by changed conditions after public notice and an opportunity to comment. However, the relevant set of specified rates for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever set is more favorable to the petitioner.

(5)(i) The useful life (N) of all powerplants except nuclear will be thirty-five (35) years. The useful life of a nuclear powerplant will be forty (40) years. The useful life of major fuel burning installations will be forty (40) years. The petitioner or ERA may utilize alternative useful life projections based upon a demonstration that such projections are more appropriate for the particular facility. Such a demonstration must consist of suitable engineering evidence, historical information, or other relevant factors applicable only to the physical life of the facility.

(ii) If the units being compared have different useful lives, the petitioner will have to modify his calculation so that the two cash flows being compared have the length of the shorter useful life. To do this, (A) use the shorter of the two useful lives in Equations 2 and 5 for both units, and (B) multiply capital investment (I) of the unit with the longer life (computed with Equation 3) by the following adjustment factor (A):

$$\text{EQ 6} \qquad A = \frac{\sum_{i=1}^{Q} (1+k)^{-i}}{\sum_{i=1}^{R} (1+k)^{-i}}$$

where:

R = The useful life of the facility with the longer life.

Q = The useful life of the facility with the shorter life.

k = The discount rate (see paragraph (d)(4) above).

(6) All Federal investment tax credits (ITC_i) and depreciation (DPR_i) values are those used for Federal income tax purposes and must be applied consistently throughout the analysis and in a manner consistent with the Federal tax laws. All investment tax credits allowed under Federal tax law must be reflected in the computations. In general, accelerated depreciation cannot be used for gas- or oil-fired boilers. Otherwise the petitioner must use the method of depreciation which results in the greatest present value of the cash flow due to the tax and depreciation effect. The marginal income tax rate (t_i) is the firm's anticipated marginal Federal income tax rate in year i. The relevant investment tax credits, depreciation methodology, and marginal Federal income tax rates for a specific exemption petition will be those prescribed by Federal law in effect (or those tax parameters which are known with certainty will be in effect) at the time a decision is rendered. (However, if an investment tax credit expires in a certain year the law which is in effect at the time the petition is submitted, the petitioner must assume that it will in fact expire in that year.)

(7) If powerplants are being compared, the design capacities or the maximum sustained energy per unit of time that could be produced must be the same. If installations are being compared, the maximum sustained energy per unit of time that could be produced must be the same.

(8) All estimated cash outlays must be computed in accordance with generally accepted accounting principles consistently applied.

(9) The scope of the estimates of relevant costs (as discussed above) of units being compared must be the same.

(10) All allowances for uncertainty and risk in the cost estimates must be explicit.

(11) All cash outlays must be net of any government subsidies or grants.

(e) *Evidence in support of the cost calculation.* All petitions for exemption requiring the use of the cost calculation shall include, but not be limited to, the following information:

(1) A detailed accounting of all cash outlays, investment tax credits, and anticipated salvage for capital investments. Include a description of and a cost estimate for all major construction and equipment. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(2) A detailed accounting of all annual cash outlays for fixed and variable operations and maintenance expenses including a description of all major elements and the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(3) A detailed accounting of all annual cash outlays for delivered fuel expenses including the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates. The fuel price and characteristics for each alternate fuel should also be included.

(4) A detailed accounting of the depreciation for each capital asset, including the depreciable base, tax life, and methods used. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(5) If a different useful life than is suggested by ERA (paragraph (d)(5) above) is being used, all critical assumptions should be stated and sufficient data included to support that position.

(6) If the petitioner's unit is an installation, a brief economic and technical justification of anticipated firing rates considering other units at the site.

§ 504.12 Cost calculations for existing powerplants and installations.

(a) General.

(1) This calculation compares the cost of using alternate fuel to the cost of using imported petroleum. It must be performed for each alternate fuel and/or alternate site that the petitioner is required to examine.

(2) The cost of using an alternate fuel (see § 500.2) as a primary energy source will be deemed to substantially exceed the cost of using imported petroleum if the difference between the cost of using alternate fuel and the cost of using imported petroleum is greater than zero.

(3) There are two comparative cost calculations—a general cost test and a special cost test. Both take into consideration cash outlays for capital investments, annual expenses, and the effect of depreciation and taxes on cash flow. To demonstrate eligibility for permanent exemption, a petitioner must use the procedures specified in the general cost test (paragraph (b) of this section). To demonstrate eligiblity for a temporary exemption, the petitioner may apply the procedures specified in either the general cost test or the special cost test (paragraph (c) of this section).

(4) The general cost test differs from the special cost test with respect to the time period over which costs are calculated. For the general cost test, the petitioner must compare the cost of using an alternate fuel with the cost of using oil or natural gas over the remaining useful life of the facility. For the special cost test, the petitioner must compare the cost of using alternate fuel against that of using imported petroleum or natural gas over the period of the desired temporary exemption.

(5) ERA will use the procedures outlined in this section to perform part of the financial feasibility finding required by § 504.6.

(b) *Cost calculation—general cost test.*

(1) A petitioner may be eligible for a permanent exemption if he can demonstrate that the cost of using an alternate fuel from the first year of the exemption substantially exceeds the cost of using imported petroleum. Unless the cost estimates as prescribed below will not change materially during the first ten years of operation of the unit with an alternate fuel (given the best information available at the time the petition is filed), the petitioner must also demonstrate that the cost of using an alternate fuel beginning at any time within the first ten years of the exemption and using imported petroleum or natural gas until such time (*i.e.*, delayed use of alternate fuel) would substantially exceed the cost of using only imported petroleum.

(2) The petitioner would only be eligible for a temporary exemption if the computed costs of delayed alternate fuel use, commencing at the start of the second through eleventh years of operation from when alternate fuel would be used, do not always substantially exceed the cost of using only imported petroleum. The length of the temporary exemption would be the minimum period in which the cost of using alternate fuel substantially exceeds the cost of using imported petroleum.

(3) To conduct the general cost test, calculate the difference (DELTA) between the cost of using an alternate fuel (COST(ALTERNATE)) and the cost of using imported petroleum (COST(OIL)) using Equations 1 through 3 below and the comparison procedures in paragraph (b)(5) of this section.

EQ 1 DELTA = COST(ALTERNATE) — COST(OIL)

where COST(ALTERNATE) and COST(OIL) are determined by:

$$\text{EQ 2} \qquad \text{COST} = I + \sum_{i=-g}^{N} \frac{(OM_i + FL_i)(1-t_i)}{(1+k)^i}$$

and I (capital investment) is:

$$\text{EQ 3} \qquad I = ID + \sum_{i=-g}^{N} \frac{I_i - ITC_i - S_i - t_i(DPR_i)\left(\frac{IX_e}{IX_i}\right)}{(1+k)^i}$$

(4) The terms in Equations 2 and 3 are defined as follows:

i = Year. i is a specified year either before year 0 or after year 0. Year 0 is the year before the proposed exemption becomes effective or, in the case of a financial feasibility finding, the year before alternate fuel use would begin. For example, in the third year before the proposed exemption becomes effective (or the unit would begin using alternate fuel, in the case of a financial feasibility finding), i would equal −2, and in the third year following commencement of the proposed exemption (or commencement of alternate fuel use), i would equal +3. Years are represented by 52 week periods prior to or following the date on which the proposed exemption would begin (or on which alternate fuel use would begin). Outlays before the proposed exemption becomes effective are future valued to the year before the proposed exemption becomes effective (year 0), and outlays after the proposed exemption becomes effective are present valued to the year before the proposed exemption becomes effective.

g = The number of years prior to the year before the proposed exemption becomes

effective (year 0) that (1) a cash outlay is first made for capital investments, (2) an investment tax credit is first used, or (3) replacement energy is required while the facility would be shut down for conversion—whichever occurs first. Years 0 and g must be the same for both the proposed conversion and no-conversion cases.

N = The remaining useful life of the unit (see paragraph (d)(6) of this section).

ID = Capital investment required to recover "lost" capacity. "Lost" capacity is the design capacity of or maximum sustained energy per unit of time that could be produced by a powerplant, or the maximum sustained energy per unit of time that could be produced by an installation, lost due to derating (see Equation 6, paragraph (d)(3) of this section). If a replacement facility is being evaluated, ID is the capital cost associated with an alternate fuel-fired replacement facility.

I_i = Yearly cash outlay (in dollars) from the year outlays first occur to the last year of the unit's useful life for capital investments. (See paragraph (d)(2) of this section for the items that must be included.)

OM_i = Annual cash outlay in year i (in dollars) for all operations and maintenance expenses except fuel (*i.e.*, all non-capital and non-fuel cash outlays). This may include labor, materials, insurance, taxes (except income taxes), etc. (See paragraph (d)(4) of this section.) Operations and maintenance expenses for "replacement energy" may be accounted for here. "Replacement energy" is that energy which substitutes for the output of a unit during the period of conversion to alternate fuel use.

S_i = Salvage value of capital investment (in dollars) in year i.

FL_i = Annual cash outlay for delivered fuel expenses (in dollars) in year i. Expenses for fuel to generate "replacement energy" above may be accounted for here. (See paragraph (d)(4) of this section for FL_i calculation instructions and Appendix II of these regulations for the procedures to determine fuel price.)

k = The discount rate expressed as a fraction (see paragraph (d)(5) of this section).

ITC_i = Federal investment tax credit used in year i resulting from capital investments (see paragraph (d)(7) of this section).

DPR_i = Depreciation in year i resulting from capital investments (see paragraph (d)(7) of this section).

t_i = Marginal income tax rate in year i (see paragraph (d)(7) of this section).

IX_i = Inflation index value for year i (see Table II-1 in Appendix II).

IX_e = Inflation index value for the year e, the year before the asset is placed in service.

(5) The step-by-step procedure that follows shows the comparison that the petitioner must make. It outlines the equipment, fuel, and time comparisons.

(i) Compute the cost of using an alternate fuel (COST(ALTERNATE)) throughout the remaining useful life of the unit using Equations 2, 3, and 6.

(ii) Compute the cost of using oil or natural gas (COST(OIL)) throughout the remaining useful life of the unit using Equations 2 and 3.

(iii) Using Equation 1, compute the difference (DELTA) between COST(ALTERNATE) and COST(OIL). If the difference (DELTA) is less than or equal to zero, a petitioner is not eligible for a permanent or temporary exemption using the general cost test and need not complete the remainder of the general cost test calculation. However, he still may be eligible for a temporary exemption using the special cost test (paragraph (c) of this section). If the difference (DELTA) is greater than zero and if the cost estimates will not materially change during the first ten years of operation of the unit with alternate fuel (given the best information available at the time the petition is filed), the petitioner has completed the test and is eligible for a permanent exemption. However, if the costs will change during the first ten years, the petitioner must complete the remainder of the general cost test—the delayed use calculations which follow.

(iv) Recompute COST(ALTERNATE) with Equations 2, 3, and 6, assuming that an alternate fuel is not used as the primary energy source until the start of the second year and that oil or natural gas is used for the first year. All cash outlays should reflect postponed use of alternate fuel.

(v) Successively recompute COST(ALTERNATE) with Equations 2, 3, and 6, assuming that the alternate fuel use is postponed until the start of the third year, fourth year, and so on, through the beginning of the eleventh year after the proposed exemption would be effective (with imported petroleum or natural gas used in the years preceding alternate fuel use).

(vi) Compute the difference (DELTA) between each of the ten COST(ALTERNATE)s calculated in paragraph (b)(5) (iv) and (v) of this section and the COST(OIL) calculated in paragraph (b)(5)(ii) of this section.

(vii) If *all* the DELTAs computed in (iii) and (vi) above are greater than zero, the petitioner is eligible for a permanent exemption. If one or more of the DELTAs is less than or equal to zero, he is eligible for a temporary exemption terminating at the beginning of the first year in which a DELTA is zero or less.

(c) *Cost calculations—special cost test.*

(1) A petitioner may be eligible for a temporary exemption if he demonstrates that the cost of using an alternate fuel will substantially exceed the cost of using imported petroleum (or natural gas) over the period of the proposed exemption. The period of the proposed temporary exemption may not exceed ten years. The petitioner must demonstrate that the cost of using an alternate fuel substantially exceeds the cost of using imported petroleum for a period of one year, two years, three years, and so forth, through the period of the proposed exemption. ERA will limit the duration of a temporary exemption to the shortest time possible.

(2) To conduct the test, calculate the difference (DELTA) between the cost of using an alternate fuel (COST(ALTERNATE)) and the cost of using imported petroleum (COST(OIL)) using Equations 4 and 5 below, Equation 3 (paragraph (b)(3) of this section), and the comparison procedures in paragraph (c)(4) of this section.

EQ 4 DELTA = COST (ALTERNATE) − COST (OIL)

where COST(ALTERNATE) and COST(OIL) are determined by:

$$\text{EQ 5} \qquad \text{COST} = I \times \frac{\sum_{i=1}^{P} (1+k)^{-i}}{\sum_{i=1}^{N} (1+k)^{-i}} + \sum_{i=1}^{P} \frac{(OM_i + FL_i)(1-t_i)}{(1+k)^i}$$

Capital investment (I) is calculated with Equation 3 (paragraph (b)(3) of this section).

(3) The terms in Equation 5 are the same as those in Equation 2 with the addition of P, the length of the proposed temporary exemption in years. (See paragraph (b)(4) of this section for other terms.)

(4) The step-by-step procedure that follows shows the comparisons which must be made.

(i) Using Equation 5, compute the cost of using an alternate fuel (COST(ALTERNATE)) assuming the length of the proposed exemption is one year.

(ii) Likewise, compute the cost of using imported petroleum or natural gas (COST(OIL)) assuming the length of the proposed exemption is one year.

(iii) Compute the difference (DELTA) between COST(ALTERNATE) and COST(OIL) using Equation 4.

(iv) Repeat the calculations made in paragraphs (c)(4) (i), (ii), and (iii) of this section assuming the length of the proposed exemption is two years, three

years, four years, and so on, up through the period of the proposed exemption.

(v) A petitioner is eligible for a temporary exemption terminating at the beginning of the first year in which a DELTA is zero or less.

(d) *Information on parameters used in the calculations.*

(1) All estimated expenditures, except fuel, shall be expressed in real (uninflated) terms by using the prices in effect at the time the petition is submitted. Instructions for fuel price calculations are contained in Appendix II.

(2) Capital investment yearly cash outlays (I_i) must include all items that are capital investments for Federal income tax purposes. All purchased equipment that has a useful life greater than one year, capitalized engineering costs, land, construction, environmental offsets, fuel inventory, transmission facilities, piping, etc., that are necessary for the conversion of the unit must be included. However, an item must only be included if a cash outlay is required after the decision has been made to convert (or not to convert) the unit; sunk costs must not be included (*e.g.*, if the firm owns the land, its purchase price may not be included).

Note.—The Guidelines for the fuel inventory for powerplants not using natural gas shall be: (a) all powerplants with only steam driven turbines—78 days, (b) all powerplants with only combustion turbines—142 days, (c) all powerplants with combined cycles—both steam driven turbines and combustion turbines—142 days. The fuel inventory for installations not using natural gas shall be the greater of: 1) 21 days fuel supply, or 2) sufficient fuel to fill sixty (60) percent of the storage volume where whatever amount is chosen is equivalent in terms of the number of days supply for both the base case and the alternate fuel case being compared. The fuel inventory of all facilities using natural gas shall be zero unless the gas supply is interruptible in which case an appropriate inventory of back-up fuel must be included. Include the salvage value of any fuel in inventory which cannot be used as a result of this conversion. The petitioner may utilize alternative fuel inventories by demonstrating through engineering or process requirements evidence that another level of inventory is appropriate. However, the petitioner must use equivalent fuel supply inventories as described above. Fuel supplies must be computed using annual fuel consumption rates.

(3)(i) Capital investment (ID), if any, required (A) to recover the design capacity or maximum sustained energy per unit of time that could be produced but would be lost due to derating or (B) to build an alternate fuel-fired replacement facility, if appropriate, must be computed with Equation 6 if, for the purposes of this calculation, it is elected to recover that capacity. COST computed with Equation 2 or 5 must yield the least cost solution.

$$\text{EQ 6} \quad ID = \frac{\sum_{i=1}^{N} (1+k)^{-i}}{\sum_{i=1}^{M} (1+k)^{-i}} \times \sum_{i=-g}^{M} \frac{ID_i - ITCD_i - SD_i - t_i(DPRD_i)\left(\frac{IX_e}{IX_i}\right)}{(1+k)^i}$$

(ii) M, ID_i, $ITCD_i$, SD_i, and $DPRD_i$, are the useful life, yearly investment cash outlays, investment tax credits, salvage values, and depreciation, respectively, resulting from the purchase of equipment required to recover the design capacity or maximum sustained energy per unit of time that could be produced, lost due to derating. All definitions and information which apply to N, I_i, ITC_i, S_i, and DPR_i (see paragraph (b)(4) of this section), also apply to M, ID_i, $ITCD_i$, SD_i, and $DPRD_i$, respectively, except that M, ID_i, $ITCD_i$, SD_i, and $DPRD_i$, are limited to equipment required to recover the loss due to derating. All other terms are as in Equation 3 (paragraph (b)(3) of this section). In the case of a replacement facility, if appropriate, ID is the capital cost associated with that alternate fuel-fired replacement facility.

(iii) If an election is made not to recover the loss due to derating (for the purpose of this calculation), ID equals zero.

(4)(i) The annual cash outlays for operations and maintenance expense (OM_i) and fuel expense (FL_i) for a powerplant may be computed by one of the following three methods; however, the one chosen must be consistently applied throughout the analysis.

(A) Assume the energy produced by the powerplant equals seventy (70) percent of design capacity times 8760 hours for each year during the remaining useful life of the powerplant, and compute cash outlays for operations, maintenance, and fuel expenses for the powerplant.

(B) Economically dispatch the powerplant in which conversion to alternate fuel is being considered and, if appropriate, the additional powerplant required due to derating or replacement. The cash outlays for operations, maintenance, and fuel expenses of all powerplants being dispatched (where oil and natural gas are priced according to the procedures of Appendix II) are the corresponding expenses for the purpose of the cost calculation. The dispatch analysis area of the cost calculation. The dispatch analysis area must be that area with which the firm currently dispatches, anticipates dispatching, and will be interconnected. It must also include all anticipated exchanges of energy with other utilities or powerpools. The outlays for operations, maintenance, and fuel may also be estimated using a methodology that incorporates the benefits of economically dispatching units and provides consistent treatment in the alternate fuel and oil or natural gas cases being compared. If the design capacity lost due to derating or replacement is recovered, as discussed in paragraph (d)(3) of this section, the petitioner must employ this method (or that described in paragraph (d)(4)(i)(C) of this section for calculating operations, maintenance, and fuel expenses.

(C) Use a dispatch analysis to project the energy produced by the powerplant for a representative (not atypical) year of operation when consuming an alternate fuel. Compute the cash outlays for operations, maintenance, and fuel expenses for the powerplant based upon the level of energy production estimated for the representative year. The dispatch analysis and fuel expenses for the cost calculation must include oil and natural gas priced according to the procedures of Appendix II.

(ii) The annual cash outlays for operations and maintenance expenses (OM_i) and fuel expenses (FL_i) for an installation may be computed by the method specified in (A) below. A second method (B) may be used unless the energy or steam produced by the alternate fuel-fired unit would be less than that computed using method A.

(A) Base the computations on the actual power or steam generation schedule of the installation in which conversion is being considered and, if appropriate, the additional installation required due to derating of the facility being converted. If power output lost due to derating is recovered for the purpose of this calculation (see paragraph (d)(3) of this section), the petitioner must employ this method for calculating operations, maintenance, and fuel expenses.

(B) If the installation has been in operation for at least two years, assume it will annually generate an amount of energy or steam equal to the average amount of energy or steam produced annually for the last five years or the

length of operation of the installation if it is less than five years.

(5) The discount rate (k) for analyses of powerplants is 2.9% or that which is computed as specified in Appendix I (45 FR 53711–2, August 12, 1980). The discount rate (k) for analyses of installations is 7.7% or that which is computed as specified in Appendix I. The inflation index (IX) is shown in Table II–1 of Appendix II. ERA will modify these specified rates from time to time as required by changed conditions after public notice and an opportunity to comment. However, the relevant set of specified rates for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever set is more favorable to the petitioner.

(6)(i) The remaining useful life (N) of a powerplant shall be thirty-five (35) years minus the age of the plant when it would begin using an alternate fuel. The remaining useful life of a major fuel burning installation shall be forty (40) years minus the age of the plant when it would begin using an alternate fuel. The petitioner or ERA may utilize an alternative useful life projection based upon a demonstration that such projections are more appropriate for the particular facility. Such a demonstration must consist of suitable engineering evidence, historical information, or other relevant factors. If the unit's remaining useful life would be extended as the result of the conversion or refurbishment, that extension must be included in the remaining useful life.

(ii) If the life of a unit would be extended, the petitioner will have to modify his calculation so that the two cash flows being compared have the length of the unextended remaining useful life. To do this, (1) use the unextended useful life in Equations 2 and 5 for the unit when it is both converted and unconverted, and (2) multiply the capital investment term (I) for the converted unit (computed with Equation 3) by the following adjustment factor (A):

$$\text{EQ 7} \qquad A = \frac{\sum_{i=1}^{Q} (1+k)^{-i}}{\sum_{i=1}^{R} (1+k)^{-i}}$$

where:

R = The extended remaining useful life of the facility.

Q = The unextended remaining useful life of the facility.

k = The discount rate (see paragraph (d)(5) above).

(7) All Federal investment tax credits, (ITC_i and $ITCD_i$) and depreciation (DPR_i and $DPRD_i$) values are those used for Federal income tax purposes and must be applied consistently throughout the analysis and in a manner consistent with the Federal tax laws. All investment tax credits allowed under Federal tax law must be reflected in the computations. In general, accelerated depreciation cannot be used for gas- or oil-fired boilers. Otherwise the petitioner must use the method of depreciation which results in the greatest present value of the cash flow due to the tax and depreciation effect. The marginal income tax rate (t_i) is the firm's anticipated marginal Federal income tax rate in year i. The relevant investment tax credits, depreciation methodology, and marginal Federal income tax rates for a specific exemption or financial feasibility finding will be those prescribed by Federal law in effect (or those tax parameters which are known with certainty will be in effect) at the time a decision is rendered. (However, if an investment tax credit expires in a certain year under the law which is in effect at the time the petition is submitted, the petitioner must assume that it will in fact expire in that year.)

(8) All estimated cash outlays must be computed in accordance with generally accepted accounting principles consistently applied.

(9) The scope of the estimates of relevant costs (as discussed above) of units being compared must be the same.

(10) All allowances for uncertainty and risk in the cost estimates must be explicit.

(11) All cash outlays must be net of any government subsidies or grants.

(e) *Evidence in support of the cost calculation.* All petitions for exemption requiring the use of the cost calculation shall include, but not be limited to, the following information:

(1) A detailed accounting of all cash outlays, investment tax credits, and anticipated salvage for capital investments. Include a description of and a cost estimate for all major construction and equipment. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(2) A detailed accounting of all annual cash outlays for fixed and variable operations and maintenance expenses including a description of all major elements and the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(3) A detailed accounting of all annual cash outlays for delivered fuel expenses including the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates. The fuel price and characteristics for each alternate fuel should also be included.

(4) A detailed accounting of the depreciation for each capital asset, including the depreciable base, tax life, and sufficient data included to support the petitioner's estimates.

(5) If a different useful life than is suggested by ERA (paragraph (d)(6)(i) above) is being used for the purpose of calculating the remaining useful life, all critical assumptions should be stated and sufficient data included to support the useful life chosen.

(6) If the petitioner's unit is an installation, a brief economic and technical justification of the power or steam generation schedule considering other units at the site.

Appendix II—Fuel Price Computation

(a) *Introduction.* This appendix provides the equations and parameters needed to specify the price of delivered fuels used in computing the cost of using imported petroleum and the cost of using an alternate fuel in Parts 503 and 504 of these regulations. The delivered price of imported petroleum or natural gas used to calculate delivered fuel expenses must reflect (1) the price of imported petroleum, (2) the effects of future real increases in imported petroleum prices, and (3) substantially exceeds premium. The delivered price of an alternate fuel used to calculate delivered fuel expenses must reflect the petitioner's delivered price of the alternate fuel and the effects of real increases in the price of that alternate fuel. Paragraphs (b) and (c) below provide alternative procedures to account for projected real increases in the prices of fuels. The petitioner may compute his fuel prices by either of these procedures as long as the same procedure is applied consistently throughout the cost analysis. Table II-1 of this appendix contains the price indices used in option 1 (paragraph (b)) and the inflation index used in computing depreciation in Parts 503 and 504 of these regulations. ERA will change the parameters specified in

paragraphs (b)(6) and (c)(6) of this section and in Tables II-1 and II-2 from time to time after public notice and an opportunity to comment. Revisions shall become effective after final publication. However, the relevant set of parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

(b) *Fuel price computation—option 1.*

(1) If it is planned to use 10 percent domestically refined [1] petroleum product in the facility, the petroleum product price (PFE_i) is computed with Equation II-1.

$$\text{EQ II-1} \qquad PFE_i = (PF + PICO - PCCO)\frac{OPX_i}{OPX_u} + PREM$$

where:

PICO = Price of imported crude oil per barrel. The most recent refiner acquisition cost of imported crude oil as reported in the **Federal Register** monthly notice for the DOE Domestic Crude Oil Allocation (Entitlements) Program.[2]

PCCO = Price of composite crude oil per barrel. The most recent weighted average cost of total reported crude oil receipts as reported in the **Federal Register** notice for the DOE Entitlements Program.[2]

PF = The current market price of the petitioner's fuel oil per barrel at the time the petition is submitted (f.o.b. the facility). Alternatively, if the petitioner does not currently have a supplier of fuel oil or is using natural gas, he should use a simple average of the market prices of fuel oil available to him (capable of being burned in the facility and meeting air quality requirements) sold in his area by at least three suppliers.

PFE_i = Price of fuel oil per barrel in year i.

OPX_i = Oil price index value for year i (see Table II-1).

OPX_u = Oil price index value for year u, the year in which the petition is submitted.

PREM = Substantially exceeds premium added to the price of oil (see paragraph (b)(6) below).

(2) If it is planned to use 100 percent imported petroleum product in the facility, the petroleum price (PFE_i) is computed with Equation II-2.

$$\text{EQ II-2} \qquad PFE_i = (PF + ENT)\left[\frac{OPX_i}{OPX_u}\right] + PREM$$

The terms in Equation II-2 are the same as those in Equation II-1 with the addition of:

ENT = ½ × EP × DOSR for residual fuel oil if an entitlement has been received by the importer, or 0 for all other products or if an entitlement has not been received by the importer.[2]

EP = Entitlement price reported in the **Federal Register** monthly notice for the DOE Entitlements Program.

DOSR = National domestic oil supply ratio reported in the **Federal Register** monthly notice for the DOE Entitlements Program.

(3) If it is planned to use a combination of domestically refined and imported petroleum product in the facility, use a weighted average of the prices computed with Equations II-1 and II-2. If it cannot reasonably be estimated what fraction of petroleum product is imported, assume that 100 percent of the fuel is domestically refined.

(4) If it is planned to use natural gas in the facility, Equations II-1 and II-2 must be used, as appropriate, to calculate the price of fuel (PFE_i), along with the price of the No. 6 residual fuel oil (PF) which meets the air quality standards in the petitioner's area.

(5) The delivered price of alternate fuel (PFA_i) must reflect the real escalation rate of alternate fuel and must be computed with Equation II-3.

$$\text{EQ II-3} \qquad PFA_i = APF\left[\frac{APX_i}{APX_u}\right]$$

The terms of Equation II-3 are defined as follows:

PFA_i = Price of alternate fuel in year i.

APF = The current market price of the alternate fuel (f.o.b. the facility).

APX_i = Alternate fuel price index value of year i (see Table II-1 and paragraph (b)(6)(iii) below).

APX_u = Alternate fuel price index for the year u, the year in which the petition is submitted (see Table II-1 and paragraph (b)(6)(iii) below).

(6) The petitioner shall use the following parameters for Equations II-1, II-2, and II-3 of this appendix:

(i) The substantially exceeds premium, PREM, is $1.00 per barrel of oil equivalent.

(ii) The oil price index values, OPX_i and OPX_u are specified in Table II-1.

(iii) The alternate fuel price index values, APX_i and APX_u, depend on the type of alternate fuel to be used.

(A) If the alternate fuel is solid coal, the petitioner must use the alternate fuel price index for coal in Table II-1.

(B) For all other alternative fuels, the petitioner may use either the alternate fuel price index for coal in Table II-1 or his own substantiated escalation rates and the equation for APX_i in footnote 3 to this appendix.

(c) *Fuel price computation—option 2.*

(1) If it is planned to use 100 percent domestically refined petroleum product in the facility, the petroleum product price (PFE_i) is computed with Equation II-4.

EQ-4 $PFE_i = (PF + PICO - PCCO) + PREM + FUTR$

where the terms are the same as those in Equation II-1 with the addition of FUTR, the premium added to the price of oil to account for projected escalation in oil prices as compared to escalation in alternate fuel prices (see paragraph (c)(6) of this section).

(2) If it is planned to use 100 percent imported petroleum product in the facility, the petroleum price (PFE_i) is computed with Equation II-5.

EQ II-5 $PFE_i = (PF + ENT) + PREM + FUTR$

where the terms are the same as those in Equations II-2 and II-4.

(3) If it is planned to use a combination of domestically refined petroleum and imported petroleum product in the facility, use a weighted average of the prices computed with Equations II-4 and II-5. If it cannot reasonably be estimated what fraction of petroleum product is imported, assume that 100 percent of it is domestically refined.

(4) If it is planned to use natural gas in the facility, Equations II-4 and II-5 must be used, as appropriate, to calculate the price of fuel (PFE_i), along with the price of the No. 6 residual fuel oil (PF) which meets the air quality standards in the petitioner's area.

[1] Footnotes are at end of section

(5) The price of alternate fuel (PFA) must be the current market price of the alternate fuel (f.o.b. the facility).

(6) The petitioner shall use the following parameters for Equations II–4 and II–5 of this appendix.

(i) The substantially exceeds premium, PREM, is $1.00 per barrel of oil equivalent.

(ii) The premium added to the price of oil to account for projected escalation in oil prices compared to escalation in alternate fuel prices, FUTR, is $4.00 per barrel of oil equivalent.

Table II–1.—*Price and inflation indices for use in the cost calculations* [3]

Year	Crude oil price index (OPX)	Alternate fuel price index for coal (APX)	Inflation index (IX)
1980	1.000	1.000	1.000
1981	1.016	1.039	1.096
1982	1.032	1.080	1.189
1983	1.049	1.122	1.281
1984	1.066	1.165	1.369
1985	1.083	1.211	1.453
1986	1.111	1.229	1.525
1987	1.140	1.247	1.586
1988	1.169	1.266	1.634
1989	1.200	1.285	1.683
1990	1.231	1.304	1.733
1991	1.257	1.316	1.785
1992	1.283	1.328	1.839
1993	1.310	1.340	1.894
1994	1.338	1.352	1.951
1995	1.366	1.364	2.009
1996	1.382	1.372	2.070
1997	1.399	1.381	2.132
1998	1.415	1.389	2.196
1999	1.432	1.397	2.262
2000	1.450	1.406	2.329
2001	1.450	1.414	2.399
2002	1.450	1.422	2.471
2003	1.450	1.431	2.545
2004	1.450	1.440	2.622
2005	1.450	1.448	2.700
2006	1.450	1.457	2.781
2007	1.450	1.466	2.865
2008	1.450	1.474	2.951
2009	1.450	1.483	3.039
2010	1.450	1.492	3.131
2011	1.450	1.512	3.224
2012	1.450	1.531	3.321
2013	1.450	1.551	3.421
2014	1.450	1.571	3.523
2015	1.450	1.592	3.629
2016	1.450	1.612	3.738
2017	1.450	1.633	3.850
2018	1.450	1.655	3.966
2019	1.450	1.676	4.085
2020	1.450	1.698	4.207
2021	1.450	1.720	4.333
2022	1.450	1.742	4.463
2023	1.450	1.765	4.597
2024	1.450	1.788	4.735
2025	1.450	1.811	4.877
2026	1.450	1.835	5.024
2027	1.450	1.858	5.174
2028	1.450	1.883	5.330
2029	1.450	1.907	5.490
2030	1.450	1.932	5.654

[1] For the purposes of these regulations, the Virgin Islands, Puerto Rico, the U.S. territories and possessions, and all the States are domestic sources.

[2] When the DOE entitlements programs are terminated, PICO, PCCO, and ENT will all equal zero.

[3] The index values OPX, APX, and IX in Table II–1 were calculated using the rates (see Table II–2) for the real increase in oil price (Ro), coal price (Ra), and inflation (INF), respectively, and the following equations:

$$OPX_i = \prod_{j=1980}^{i} (1 + Ro_j)$$

$$APX_i = \prod_{j=1980}^{i} (1 + Ra_j)$$

$$IX_i = \prod_{j=1980}^{i} (1 + INF_j)$$

where:

i = Calendar year of index, and

π = Product of terms with index j ranging from 1980 to i.

If the petitioner chooses to supply his own escalation rates for an alternate fuel, as provided in option 1 (paragraph (b)(6)(iii) (B) and (C) of Appendix II), he must use the equation for APX_i to calculate the appropriate index values.

Table II–2.—*Rates of fuel price increase and inflation used in Table II–1*

Year (j)	Ro	Ra	INF
1980	0.000	0.000	0.000
1981	.016	.039	.096
1982	.016	.039	.085
1983	.016	.039	.077
1984	.016	.039	.069
1985	.016	.039	.061
1986	.026	.015	.050
1987	.026	.015	.040
1988–90	.026	.015	.030
1991–95	.021	.009	.030
1996–2000	.012	.006	.030
2001–10	.000	.006	.030
2011–30	.000	.013	.030

Final Regulatory Analysis for the Purposes of the Fuel Use Act Cost Calculations

I. Introduction

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has issued the final rule on the cost calculation provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA). This regulatory analysis was prepared in conjunction with that final rule. Comments on the substance of the rule by the public are examined and addressed in the preamble to the proposed rule [45 FR 24190–9, June 23, 1980) and in the preamble to the final rule published this date.

II. Impact Analysis

This section describes the analyses which have been done in support of the final rule on the cost calculations. Two aggregate analyses, two microeconomic analyses, and two social benefit analyses were performed and are discussed here.

A. Aggregate Analyses of FUA

The quantitative impacts of policy alternatives available to DOE in implementing FUA were assessed by the Energy Information Administration (EIA) of DOE in two analyses. [The findings and limitations of these analyses were referenced and discussed in earlier FUA rulemakings (43 FR 54058–61, November 17, 1978; 44 FR 28954–6, May 17, 1979; and 45 FR 42209–12, June 23, 1980).] The results of these analyses have only slight relevance to an analysis of the current impact of FUA, because they are limited by the unforseen obsolescence of the assumptions used to derive them, particularly the rapid divergence in the prices of oil and coal, the response of utilities and consumers to these price changes, and the effect of these parameters on natural gas demand, pricing, and displacement of imported petroleum. Because ERA was able to draw only the broadest conclusions from these evaluations—that FUA would reduce the amount of imported petroleum to some extent and that in a high oil/coal price differential environment, the effect of an increment added to the price of oil would be small—ERA chose to perform several additional analyses which would provide a more timely evaluation of FUA's impact than the previous analyses.

B. Microeconomic Analyses of FUA

The effects of FUA were reexamined by ERA after it became apparent that the usefulness of the aggregate analyses were limited. In the first microeconomic analysis (reported in "An Assessment of Various Cost Test Levels on Different Types of Installations," dated May 8, 1980, Financial Analysis Branch, Office of Fuels Conversion, ERA), ERA used its limited experience with initial petitions submitted under the interim regulations to infer the broad classes of facilities (by size and application) that would be required to burn an alternate fuel, given both the effects of increasingly higher fuel price escalation rates and a substantially exceeds increment added to the price of oil. DOE found that:

(1) A $4/bbl addition* to the current cost of fuel based on world oil prices** would result in:
—virtually all new powerplants, except peakload units, having to use coal or nuclear power,
—most new industrial boilers at new sites having to use coal, and
—new, large industrial boilers replacing or expanding existing facilities and operating at least two shifts per day having to use coal.

(2) A $6/bbl addition* would have a marginal impact ($2 over the above $4) resulting in:
—older existing coal-capable powerplants converting to coal, and
—new, industrial boilers replacing or expanding existing facilities and operating at least one shift per day having to use coal (given minimal site restrictions).

(3) A $8/bbl addition* would have a marginal impact ($2 over the above $6) resulting in:
—new industrial boilers replacing or expanding existing facilities, operating one shift per day, and having an atypical capital cost and/or additional site restrictions, having to use coal, and
—new industrial boilers with gasifiers operating continuously at new sites, having to use lo-Btu coal gasification.

This analysis is limited because of incomplete data and because ERA has not been able to quantify the amounts of imported petroleum which would be saved at each level of stringency. However, it does give some indication of what types of individual facilities would likely be impacted which could not be done by the aggregate analyses.

ERA performed the second microeconomic analysis using the same facilities data as was used in the first analysis (included in the public record for the proposed rulemaking) to evaluate the sensitivity of a petitioner's exemption domain to his real, after tax cost of capital. The contractor study (summarized at 44 FR 43222–23, July 23, 1979) which determined the 7.7% mean cost of capital for industrial firms indicated a standard deviation of 2.4%. Thus many of the firms sampled had real capital costs higher than 7.7% and would be penalized if constrained to the mean rate. The extent of this imposed penalty is illustrated in Figures 1 and 2. For example, a firm that is purchasing a large boiler and whose real cost of capital is 10% would be exempted at this rate when the boiler is operated at a capacity factor of less than 22% (Point A, Figure 1). If the firm was constrained to use the mean of 7.7%, however, the boiler would only receive an exemption if operated at a capacity factor of less than 18% (Point B, Figure 1).

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*This addition to the cost of fuel as calculated in the FUA cost tests has two components, one attributable to the additive effect of the substantially exceeds cost premium. The other component is the present value of future increases in real fuel prices calculated as an annuity.

**From a base price of $30 per barrel.

FIGURE 1

COST TEST EXEMPTION DOMAIN

LOCUS OF POINTS WITH A NET PRESENT VALUE OF ZERO AS A FUNCTION OF:

* ANNUAL CAPACITY FACTOR,
* COST OF CAPITAL, AND
* UNIT SIZE.

ASSUMED FUEL PRICES ARE:

* $4.50/MMBtu - OIL
  and
* $2.00/MMBtu - COAL.

SUBSTANTIALLY EXCEEDS PREMIUM IS $1.00.

7.7% IS THE MEAN COST OF CAPITAL FOR INDUSTRIAL FIRMS.

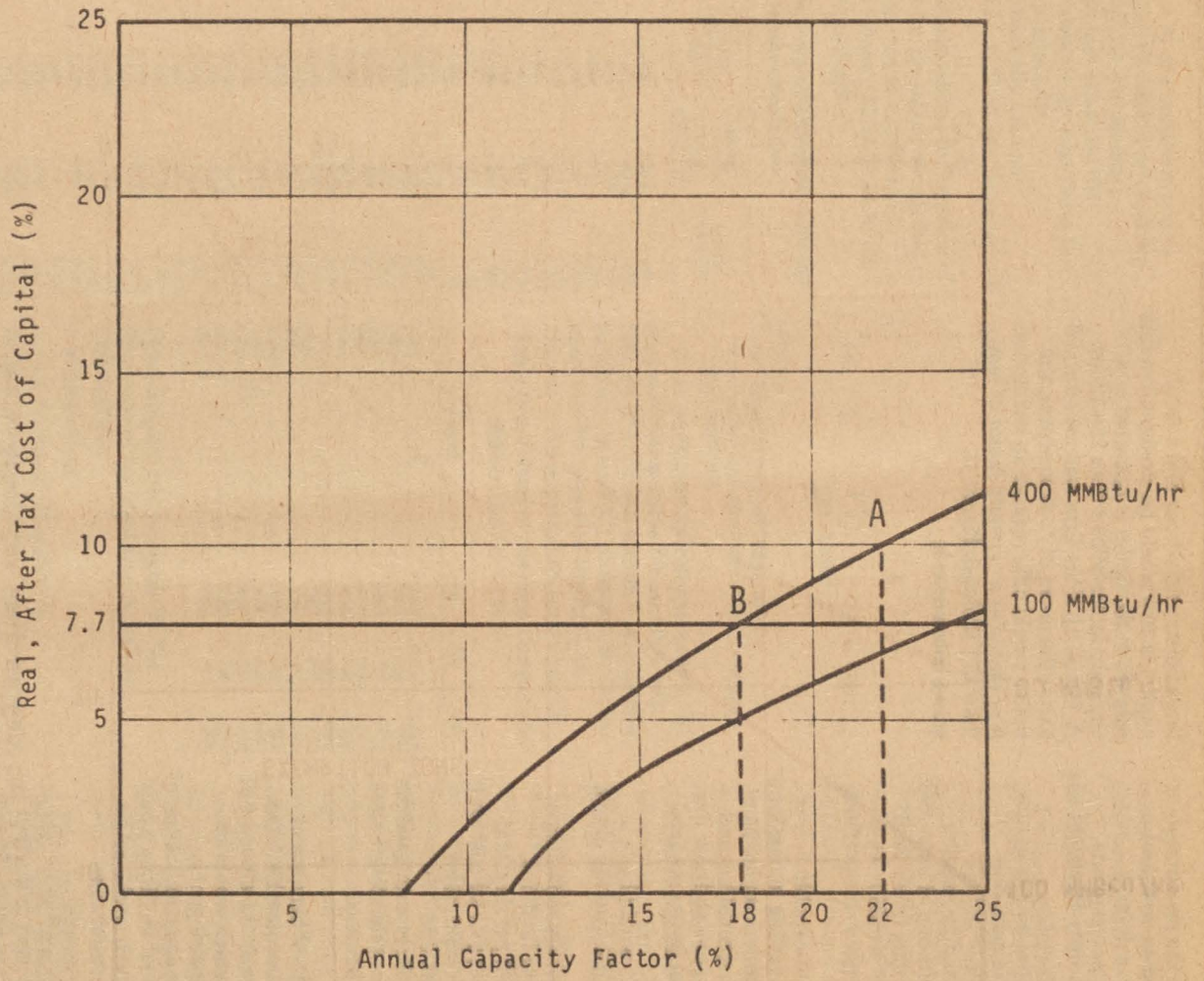


FIGURE 2

COST TEST EXEMPTION DOMAIN

LOCUS OF POINTS WITH A NET PRESENT VALUE OF ZERO AS A FUNCTION OF:

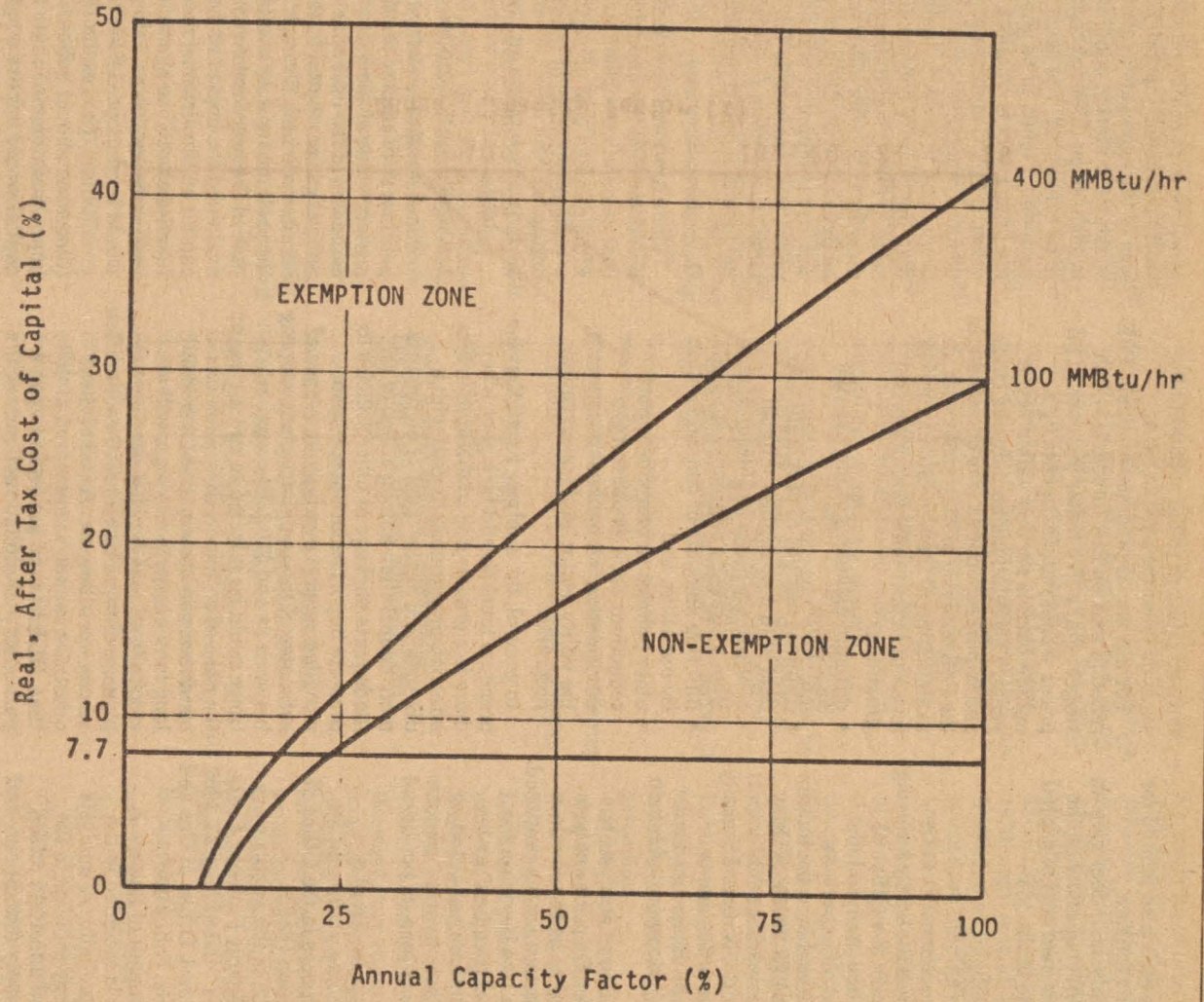
* ANNUAL CAPACITY FACTOR,
* COST OF CAPITAL; AND
* UNIT SIZE.

ASSUMED FUEL PRICES ARE:

* $4.50/MMBtu - OIL
and
* $2.00/MMBtu - COAL.

SUBSTANTIALLY EXCEEDS PREMIUM IS $1.00.

7.7% IS THE MEAN COST OF CAPITAL FOR INDUSTRIAL FIRMS.



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While this analysis is also limited for the same reasons as the first microeconomic analysis, it does give an indication of the effect of allowing the petitioner to use his own cost of capital as the discount rate in the cost calculation.

C. Social Benefits of FUA

There are very real benefits to be gained for the United States by reducing petroleum imports. DOE's Office of Policy and Evaluation analysed the benefits of reduced oil imports as described in the preamble to the interim FUA regulations (44 FR 28955–56, May 17, 1979) under the headings "Oil Import Reduction Premium," "National Security Benefits," "Balance of Payments Benefits," and "Legal Emissions Under the Clean Air Act," incorporated herein by reference.

A completely different analysis has been substituted for the prior analysis and was performed so as to provide a fresh point of departure for the proposed rule. This analysis was based on the concept of a "social premium" as the most straightforward way of signaling the market place that imported oil costs more to the economy than its per-barrel price.

This new analysis is part of a continuing study being performed for general policy purposes in the Office of Policy and Evaluation (P&E) [Preliminary results of the analysis are reported in "The Energy Problem: Costs and Policy Options," dated May 23, 1980 (Staff Working Paper), Office of Gas and Integrated Analysis, Policy and Evaluation, Department of Energy. A copy of this paper is included in the public file.]. This preliminary analysis examined the energy problem in the context of high and uncertain prices, vulnerability to supply disruptions, and vulnerability to strategic threats of disruption used to gain foreign policy, military, or economic concessions by analysing three different world views with varying levels of risk of disruptions.

The major goal of the analysis was to quantify certain general policy conclusions:

- that very large strategic oil stockpiles should be built rapidly if serious future disruptions are anticipated;
- that contingency plans, such as a very high short term tariff, should be used to mitigate the cost of disruption if one occurs; and
- that measures beyond deregulation of energy prices should be taken to reduce imports.

Only the quantification of this last conclusion, which is discussed below, is directly relevant to the substantially exceeds premium used in FUA.

For this social premium analysis, P&E relied in part on EIA forecasts which suggest that a five dollar increase in oil prices would reduce imports by a million barrels per day within seven years. This relationship between costs and import reductions was combined (in the P&E analysis of May 1980) with an examination of the benefits of varying levels of import reduction in several situations:

- different estimates of the risk of a disruption,
- different degrees of preparation to deal with a disruption through contingency plans and draw-downs from a strategic petroleum stockpile,
- differing amounts of common action by our allies, and
- other policies to promote import reductions such as natural gas deregulation, oil backout programs in the utility sector, and conservation programs.

In general, the analysis found that the premium level should be higher when there is a greater risk of disruption, less effective preparation to deal with a disruption, a higher level of oil imports, more cooperation among allies, or an inadequate package of other policies to promote import reductions. It also provided several overlapping ranges of estimates of the social premium, varying between $4 and $10.* The appropriate range could be selected to suit a view on the risks of an import disruption based on answers to certain questions about long term energy policy, *e.g.*, will we stockpile oil and develop contingency plans, will there be effective cooperation among our allies, etc. As all of these questions cannot be answered at this time, DOE has not yet settled upon a particular probabilistic estimate of the risks of disruption.

This P&E analysis did not attempt to re-estimate separately the social benefits of balance of payments changes from reduced oil imports or the costs of increased legal air emissions under the Clean Air Act. The analysis did estimate the price effect from lower world oil prices (a result of decreased demand) and the benefits from decreased vulnerability to sudden supply disruptions (a result of decreased reliance on interruptible foreign supplies). The size of these particular components of the premium can be quite sensitive to specific conditions in the world petroleum market. However, the size of the aggregate premium is less sensitive to market conditions as influences on different components tend to be off-setting. The security component tends to be greatest when the price effect is smallest, and vice versa. If OPEC matches any U.S. demand reduction with decreased production in order to maintain prices, then the security component will be large. If OPEC maintains production, then the U.S. or its allies will continue to be dependent on OPEC oil and the security component will be small, but prices will necessarily fall in order for OPEC to maintain production levels in the face of reduced demand.

D. Decision Summary

There are three key decisions which will determine the impact of the FUA cost calculation regulation. These are:

- the allowed cost of capital rate,
- the specification of future fuel prices, and
- the level of the substantially exceeds premium.

1. Allowed cost of capital.

The Act requires exemption petitioners to employ the discounted present value of the best practicable estimates of the cost of using oil or natural gas compared to those of using an alternate fuel. Through an analysis of the preliminary data available at the time of the proposed rulemaking, ERA evaluated the impact of the real cost of capital on the circumstances (*e.g.*, functional and use characteristics of the unit) under which an industrial boiler would be exempted from the FUA prohibitions. The results of this analysis (discussed above) indicated that imposition of a mean rate for the cost of capital would impose a significant burden on those petitioners whose rates exceed the mean values. Consequently, ERA has modified its position from that in the proposed rule and will allow petitioners to use either the previously specified cost of capital rates or the firm-specific rate as calculated by the methodology in Appendix I of the final rule (45 FR 53711–12, August 12, 1980).

2. Specification of fuel prices.

To implement the statutory provision that exemption applicants compare the present value costs of using alternate fuel to those of using imported oil, ERA had to determine how to specify future fuel price behavior and how to equate natural gas to the mandated imported oil cost standard.

a. *Future fuel prices.* DOE, in consensus with other forecasters (45 FR

*A $4 to $10 range would be the appropriate range if there were virtually no oil in strategic storage. A $2 to $6 range would be the appropriate range if there were several billion barrels of oil in strategic storage. At this time, ERA believes that the $4 to $10 range is the more appropriate.

42192–9, June 23, 1980), believes imported oil prices will increase faster than inflation. ERA could propose a cost calculation which accounts for explicit increases in fuel prices in the future. Alternatively, ERA could propose that a single annuity value used to represent future increases in petroleum over coal prices, or a combination of these two approaches. ERA believes that use of an explicit increase in prices is conceptually more precise than a single premium, which does not accurately account for the varying remaining lifetimes of existing facilities nor the impact of the different discount rates used for utilities and industrial firms.

ERA examined a variety of recent fuel price projections, those published by the DOE Energy Information Administration and two widely used private forecasting services—Data Resources, Inc. (DRI) and Wharton Econometric Forecasting Associates (Wharton).

As discussed in the preamble to the proposed cost calculation rule (45 FR 42192–6, June 23, 1980), ERA computed the equivalent premium associated with each forecast for a new industrial facility* and found that these premiums ranged up to $13.75 per barrel. Because of the wide variation in these forecasts of future price behavior, ERA is adopting what it believes to be a reasonably conservative limit of a four dollar per barrel annuity added to the price of petroleum in combination with specific fuel price escalation rates based on the EIA "Medium Scenario" as the most appropriate to FUA implementation at this time.

b. *Natural gas price.* The statutory cost test requires a comparison of the cost of alternate fuel with the cost of imported petroleum and does not specifically mention how natural gas should be treated. The petroleum replacement product for natural gas is generally number 6 residual fuel oil, or in some instances, number 2 distillate. Since number 6 residual fuel oil is the more prevalent replacement product for natural gas and lower in price than number 2 distillate, ERA has priced natural gas equivalent to number 6 residual fuel oil in the final rule. ERA will continue to examine the ramifications of this decision, particularly as it impacts the FUA requirement for powerplants to be off natural gas by 1990.

3. Level of substantially exceeds premium.

The preliminary analysis performed by the Office of Policy and Evaluation discussed earlier estimated that, in the context of varying levels of risk of disruption of oil imports, an appropriate social premium would range from $4 up to $10. This is estimated to be the value that should be associated with reductions in the level of oil imports. However, ERA has no reason to believe that the impact of imposing the full amount of the social premium in addition to the fuel price escalation factor (based on the EIA Medium Scenario) would result in significant additional oil imports savings.

Therefore, in light of the statutory requirements that the cost exemption be granted only if the cost of an alternate fuel substantially exceeds the cost of imported oil, ERA is adopting a conservative premium of $1 per barrel at this time.

*The premium is equal to an equivalent annuity added to the price of imported petroleum for a facility with a 40 year life and 7.7

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 80-759]

Final Amendments Concerning Director and Officer Management Interlocks

Dated: December 4, 1980.

AGENCY: Federal Home Loan Bank Board (Federal Savings and Loan Insurance Corporation).

ACTION: Final amendments.

SUMMARY: These amendments delete Board rules superseded by the Management Official Interlocks Act ("Act"), which prohibits "management officials" from serving as directors, officers or managers of nonaffiliated depository organizations that the Act defines as "in competition." The prohibitions contained in the Act incorporate, and in many cases strengthen, Board rules that concern the composition of an insured institution's board of directors, and that prohibit a salaried officer of an insured institution from serving as a salaried officer of another competing depository organization.

EFFECTIVE DATE: December 4, 1980.

FOR FURTHER INFORMATION, PLEASE CONTACT:
Patricia C. Trask, Attorney, (202) 377–6442, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By resolution No. 80–6 of January 6, 1980 (45 FR 1916; January 9, 1980), the Board proposed deleting certain provisions of its conflicts of interest regulations (12 CFR 563.33) and making other changes initiated by the Management Official Interlocks Act ("Act"). This Act (title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, 12 U.S.C. 3201 *et seq.*, effective March 10, 1979) applies to all depository institutions including banks, savings and loans (and holding companies of both), and credit unions.

Although the public comment period of this proposal closed March 9, 1980, the Board postponed adopton of final amendments while reviewing the impact of other conflict of interest guidelines in 12 CFR 563.33(a)(1) through (a)(4) to determine whether additional amendments would be appropriate. Public comment was specifically requested on the advisability of retaining, amending, or deleting those guidelines.

Public response to the proposal was very light. In addition to comment from the Federal Home Loan Banks, the Board received seven comment letters: four from Federally-chartered associations, two from thrift industry trade groups, and one from a law firm. On the basis of these comments and other information available to the Board, the regulatory amendments are adopted as proposed with one change: the proposed disclosure exemption, being no longer necessary as a result of other amendments, is not adopted. The amendments are discussed below under the heading, "Discussion of Comments and Changes."

Background

A. The Management Official Interlocks Act

The Act prohibits "management officials" from serving as directors, officers or managers of nonaffiliated depository organizations that the Act defines as *per se* in competition. The Act defines the term "management official" broadly to include:

. . . An employee or officer with management functions, a director (including an advisory or honorary director), a trustee of a business organization under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

Section 203 of the Act prohibits management official interlocks between depository organizations located in the same, contiguous or adjacent cities, towns, or villages, as well as between their depository institution affiliates. In addition, management official interlocks between depository organizations, as well as between their depository

institution affiliates, located within the same SMSA, are prohibited if one of the depository organizations has total assets of $20 million or more. Section 204 of the Act prohibits management official interlocks between two large depository organizations having assets exceeding $1 billion and $500 million respectively, as well as between their affiliates, regardless of where in the United States the depository organizations are located.

B. Board Conflict of Interest Regulations Section 563.33

Section 563.33 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.33) was adopted by the Board in 1976 as part of the conflict of interest regulations. Generally, § 563.33—

1. delineates guidelines regarding composition of the board of directors of insured institutions;

2. prohibits salaried officers of insured institutions from serving concurrently as salaried officers of other financial institutions; and

3. prohibits employees and officers of insured institutions from working for affiliated persons unless the insured institutions are compensated.

Compliance with the § 563.33(a) guidelines is voluntary, with two exceptions:

1. Institutions insured subsequent to September 30, 1976, the effective date of the regulation, are required to comply with the guidelines as a condition of insurance. Compliance may be enforced through a cease-and-desist order.

2. Institutions insured prior to September 30, 1976, were given the option to agree in writing to comply with the guidelines. Institutions that submitted an agreement to comply were released from any previously established conditions of insurance affecting composition of the institution's board of directors. Compliance, following written receipt of the agreement, is no longer voluntary and may be enforced through a cease-and-desist order.

For all other insured institutions, noncompliance with any of the provisions of the guidelines triggers disclosure as provided for in § 563.45 of the Insurance Regulations.

Discussion of Comments and Changes

A. Section 563.33, paragraphs (a)(1) through (a)(4)

The Board reviewed and evaluated the experience of insured institutions with the conflict of interest guidelines in § 563.33(a)(1) through (a)(4) as well as considered public comment on these provisions. Paragraph 563.33(a)(1) suggests that a majority of an association's directors live or work in the association's normal lending territory; paragraphs 563.33(a)(2), (a)(3) and (a)(4) establish guidelines concerning director service by salaried employees, family members, and attorney from the same law firm. Because the Board believed that compliance with the prohibitions of title II would not substantially increase the burden of conforming with these guidelines, no regulatory amendments to these provisions were proposed.

Most comments addressing these provisions confirmed the Board's assessment, and also recommended that they be retained. One commenter stated:

> . . . These four directives are helpful to associations in designing a well-structured, fairly balanced board of directors. We believe the principles outlined in the remaining guidelines are well founded. Strict adherence to them will assist associations in avoiding any semblance of conflict-of-interest situations insofar as director influence is concerned.

One comment addressed specifically to paragraph (a)(1) suggested that an institution's "normal lending territory" be clarified. Another recommended that this geographic area be limited to the community or communities delineated in the institution's Community Reinvestment Act statement. The Board does not agree that there exists a need for either change, and therefore declines to amend that paragraph at this time. The phrase "normal lending territory" is defined at 12 CFR 561.22(a), as amended by Board Resolution No. 80–700 of November 10, 1980 (45 FR 76095; November 18, 1980), to mean:

> * * * The area (1) within the State in which such institution's principal office is located; (2) within any portion of a circle with a radius of 100 miles from the principal office which is outside of such State; and (3) other territory in which the institution was operating on June 27, 1934.

Three comments on paragraph (a)(2) were received. One argued for expanding the number of salaried officers or employees who may serve as directors from one-third to one-half of the board where the insured institution is a wholly-owned subsidiary of a diversified holding company. The second recommended reducing the percentage to one-fourth for all covered institutions and holding companies. The third comment favored the existing percentage, which was seen as quite liberal.

This guideline's purpose is to provide a check on management operations by establishing an independent board of directors. This purpose would, of course, be weakened if salaried employees and officers were too heavily represented on the board. In the absence of substantial justification for changing this provision, the Board believes it reasonable to allow the one-third limitation to remain unchanged.

B. Section 563.33, paragraph (a)(5)

Paragraph 563.33(a)(5) contains guidelines that: limit the number of directors permitted to interlock, specify the kinds of financial institutions that such directors may serve, and designate positions of compensated service such directors may occupy.

Title II prohibits most of the management interlocks listed in the (a)(5) guidelines. Because the title II prohibitions extend to all "management officials," its prohibitions against interlocking service are far more comprehensive than the (a)(5) guidelines' recommendations, which address only service by directors.

The continued existence of the (a)(5) guidelines after enactment of the Act has generated substantial industry confusion. Because violations of title II can only be remedied by discontinuance of the prohibited interlock, an insured institution fully in compliance with the § 563.33 (a)(5) guidelines may well be in violation of the prohibitions of title II. Conversely, an insured institution in full compliance with title II is not automatically in compliance with the (a)(5) guidelines.

Therefore, on December 21, 1979, by Resolution No. 79–682, the Board amended § 563.45(b)(3)(i) of the Insurance Regulations to provide that an insured institution need not prepare an Annual Report Form for the audit period preceding its 1980 annual meeting if the sole trigger for disclosure is the institution's noncompliance with the guidelines set forth in § 563.33(a)(5). The amendment in § 563.45 (b)(3)(i) allows management officials whose service is grandfathered under section 206 of the Act to continue to serve the insured institution even though that continued service results in the institution's noncompliance with the (a)(5) guidelines. In adopting the amendment to § 563.45(b)(3)(i), the Board indicated that the one year extension for compliance would allow adequate time to revise or delete guidelines determined to have been superseded by the Act.

After carefully considering the interrelationship of the Act's prohibitions and the guidelines, as well as public comment, which unanimously supported deletion, the Board believes that the (a)(5) guidelines have been

superseded by title II, and is therefore deleting § 563.33 (a)(5) in its entirety.

C. Section 563.33, paragraph (c)

This provision prohibits any salaried officer of an insured institution from also serving as a salaried officer of another nonaffiliated financial institution after the insured institution's 1978 annual meeting if the other financial institution or any holding company affiliate financial institution has an office either (1) within the same county or SMSA as the insured institution, or (2) within any county or SMSA from which the insured institution receives more than $5 million or 5% of its savings accounts.

The Board believes that deletion of § 563.33(c) is warranted because of its limited usefulness, and because title II reflects a Congressional determination that only the listed restrictions, which do not include a rule similar to § 563.33(c), are needed to preclude salaried officers of insured institutions from serving as officers of other competing depository organizations. It would therefore be consistent with Congressional intent to delete § 563.33(c). Public comment also supports this deletion.

D. Section 563.45, subparagraph (b)(3)

The Board is not adding new subdivision (ii) to § 563.45(b)(3) as proposed. Because it is sometimes necessary to shore up the management of problem institutions with expertise from well-managed institutions, the Board has occasionally found it necessary to request management officials serving on the boards of other competing depository institutions to serve on the board of a problem insured institution located in the same community. The resulting interlocking arrangement may, however, violate the § 563.33 guidelines subjecting the problem institution and, in some cases, the beneficiary institution, to disclosure.

The proposed amendment to paragraph 563.45(b)(3) would have provided an exemption from the requirement that interlocking relationships be disclosed in an insured institution's annual report as a result of noncompliance with the guidelines set forth in paragraph 563.33(a). However, since subparagraph (a)(5) and paragraph (c) of § 563.33 have been deleted, interlocking relationships are no longer encompassed by that section, and, as a result, supervisory exemption from disclosure is obviated.

The Board believes that it is in the public interest to adopt these amendments to be effective immediately in recognition of the superseding provisions of the Management Official Interlocks Act and the need to provide clear direction for insured institutions preparing their annual reports. Therefore, the Board finds that publication of the amendments for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date is unnecessary and not in the public interest.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below, effective December 4, 1980.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

§ 563.33 [Amended]

1. Amend § 563.33 by removing paragraph (a)(5) and paragraph (c), and by redesignating paragraph (d) as paragraph (c).

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1435a, 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-40154 Filed 12-23-80; 8:45 am]

BILLING CODE 6720-01-M

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Part 1204

[Docket No. D-0014]

Interest in Deposits; Penalty for Early Withdrawals of IRA/Keogh Time Deposit Funds

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Final rule.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") has adopted a rule providing that where a time deposit held in an Individual Retirement Account ("IRA") or Keogh (H.R. 10) plan is paid before maturity within seven days of the establishment of the IRA or Keogh plan, the minimum required early withdrawal penalty is the forfeiture only of the interest earned on the time deposit.

EFFECTIVE DATE: December 15, 1980.

FOR FURTHER INFORMATION CONTACT: Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447–1632), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389–4261), Daniel L. Rhoads, Attorney, Board of Governors of the Federal Reserve System (202/452–3711). Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377–6446), Allan Schott, Attorney-Advisor, Treasury Department (202/566–6798), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452–3612).

SUPPLEMENTARY INFORMATION: Effective June 2, 1980, the Committee revised the penalty required to be imposed by depository institutions (federally insured commercial banks, mutual savings banks, and savings and loan associations) on withdrawals of time deposit funds prior to maturity (12 CFR 1204.103, 45 FR 37801). Under the revised rule, where a time deposit with an original maturity of less than three months, or any portion thereof, is paid before maturity, the minimum required penalty is a forfeiture of an amount equal to the amount of interest that could have been earned on the funds withdrawn at the nominal rate of interest being paid on the deposit had the funds remained on deposit until maturity. Where funds are withdrawn prior to maturity from a time, deposit with an original maturity of three months to one year or from a time deposit with an original maturity of more than one year, the minimum required penalty is, respectively, a forfeiture of an amount at least equal to three months or six months of interest earned, or that could have been earned, on the funds withdrawn at the nominal rate of interest being paid on the deposit regardless of the length of time the funds withdrawn have remained on deposit.

Questions have been raised by a number of depository institutions concerning a conflict between the penalty rule and Internal Revenue Service ("IRS") regulations regarding IRAs. The penalty rule requires a reduction or invasion of principal where time deposit funds are withdrawn in the early months after the date of deposit. IRS regulations, however, provide that if specified required disclosure statements are not given to an IRA depositor seven days before the IRA is established, the depositor must be given the right to revoke the IRA within seven days of its establishment. The regulations further provide that if the depositor exercises the right of revocation, he or she must be refunded the entire amount of the consideration paid for the IRA (26 CFR 1.408–1(d)(4)(ii)(A) (1) and (2) and (iii)(B)(14)).

Many depository institutions provide the required disclosure statement to depositors at the time the IRA is initially established and the funds are invested in a time deposit. In such circumstances, if the depository subsequently decides to revoke the IRA within seven days and withdraws the time deposit funds, the institution is required under the current early withdrawal penalty rule to impose a penalty that will result in a forfeiture of principal. Invading principal, however, conflicts with the IRS provisions requiring that a depositor be refunded the entire amount of the consideration paid for the account under such circumstances. Although there is no conflict if the depository institution provides the disclosure statement seven days before the IRA is opened, for reasons of customer and administrative convenience many institutions choose to provide the disclosure simultaneously with the opening of the account.

In order to facilitate the administration and offering of retirement accounts, the Committee has adopted a rule eliminating the conflict between the current penalty rule and IRS regulations regarding IRAs. Although the conflicting IRS provisions do not apply to Keogh (H.R. 10) plans, in the interest of administrative simplicity, the rule also will apply to Keogh (H.R. 10) plans. Under this rule, where a time deposit held in an IRA or Keogh (H.R. 10) plan is withdrawn before maturity within seven days of the establishment of the IRA or Keogh, the minimum required early withdrawal penalty is the forfeiture of the interest earned on the time deposit, and no invasion of principal is required as under the current rule. Early withdrawals of IRA or Keogh time deposits made more than seven days after the opening of the IRA or Keogh will continue to be subject to the current early withdrawal penalty rule.

This action was taken by the Committee in view of the adverse effect on depository institutions and retirement savers occasioned by the conflict between the early withdrawal penalty rule and IRS regulations. In view of these considerations, and because this amendment relieves a restriction, the Committee finds that application of the notice and public participation provisions of 5 U.S.C. 553 to this action would be contrary to the public interest and that good cause exists for making this action effective in less than 30 days.

Pursuant to its authority under Title II of Public Law 96-221, 94 Stat. 142 (12 U.S.C. 3501 *et seq.*), to prescribe rules governing the payment of interest and dividends on deposits of federally insured commercial banks, savings and loan associations, and mutual savings banks, effective December 15, 1980, the Committee amends Part 1204 (Interest on Deposits) by adding § 1204.113 as follows:

PART 1204—INTEREST ON DEPOSITS

* * * * *

§ 1204.113 Early Withdrawal of IRA and Keogh (H.R. 10) Plan Time Deposits.

Notwithstanding the provisions of 12 CFR 1204.103, where a time deposit, or any portion thereof, held in an Individual Retirement Account established in accordance with 26 U.S.C. 408 is paid before maturity within seven days after the establishment of the Individual Retirement Account pursuant to the provisions of 26 CFR 1.408-(1)(d)(4), or where a time deposit, or any portion thereof, held in a Keogh (H.R. 10) plan established in accordance with 26 U.S.C. 401 is paid before maturity within seven days after the establishment of the Keogh (H.R. 10) plan, a depositor shall forfeit an amount at least equal to the interest earned on the amount withdrawn at the nominal (simple interest) rate being paid on the deposit.

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,

Executive Secretary of the Committee.

[FR Doc. 80-40062 Filed 12-23-80; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 1204

[Docket No. D-0012]

Interest on Deposit; Phaseout of Finders Fees

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Final rule.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") has adopted a final rule permitting a phaseout of finders fee programs over an 18-month period for those depository institutions that can demonstrate that finders fees accounted, on average, for 25 percent or more of their outstanding domestic small-denomination time and savings deposits over the ten-quarter period ending June 30, 1980. The base for the phaseout is the amount of domestic small-denomination time and savings deposits outstanding on June 30, 1980, on which finders fees had been paid. This based amount may not be exceeded during the phaseout period. The maximum amount of small-denomination time and savings deposits that may be raised through the continued use of finders fees is limited to 85 percent of the amount of domestic small-denomination time and savings deposits on which finders fees had been paid maturing in the semi-annual period ending June 30, 1981, and 60 percent and 40 per cent of the amount of such deposits maturing in the semi-annual periods ending December 31, 1981 and June 30, 1982, respectively.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447-1632), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389-4261), Daniel L. Rhoads, Attorney, Board of Governors of the Federal Reserve System (202/452-3711), Allan Schott, Attorney-Advisor, Treasury Department (202/566-6798), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452-3612).

SUPPLEMENTARY INFORMATION: At its September 9 meeting, the Committee adopted a rule, effective December 31, 1980, defining finders fees (fees paid to a person who introduces a depositor to an institution) as a payment of interest to the depositor for purposes of determining compliance with interest rate ceilings limitations (45 FR 68641). This action was taken in view of the increased use of finders fees and the consideration that finders fees, in some cases, may be used to circumvent interest rate ceilings. In taking this action, the Committee was aware that some institutions may have relied extensively on the use of finders fees to attract or retain deposits and that immediate application of the rule on December 31, 1980, could cause hardship for such institutions. Accordingly, the Committee requested public comment on a proposal to provide a two-year phaseout of finders fee programs for those institutions that could demonstrate that finders fees had accounted, on average, for 25 percent or more of their outstanding domestic small-denomination time and savings deposits over the ten-quarter period ending June 30, 1980.

After consideration of the more than 80 comments received on the proposal (73 opposed, 5 in favor), the Committee has adopted a final rule permitting a phaseout of finders fee programs over an 18-month period for those institutions that can demonstrate that finders fees accounted, on average, for 25 per cent or more of their outstanding domestic

small-denomination time and savings deposits over the ten-quarter period ending June 30, 1980. The base for the phaseout is the amount of domestic small-denomination time and savings deposits outstanding on June 30, 1980, on which finders fees had been paid. This base amount may not be exceeded during the phaseout period. The maximum amount of small-denomination time and savings deposits that may be raised through the continued use of finders fees is limited to 85 per cent of the amount of domestic small-denomination time and savings deposits on which finders fees had been paid maturing in the semi-annual period ending June 30, 1981, 60 percent of the amount of such deposits maturing in the semi-annual period ending December 31, 1981, and 40 per cent of the amount of such deposits maturing in the semi-annual period ending June 30, 1982. Any maturing domestic small-denomination time deposit on which a finders fee had been paid and that is renewed, whether or not a finders fee is paid upon renewal, must be included in the amount of deposits obtained through the use of finders fees for purposes of determining compliance with the above percentage limitations.

Under the rule, an institution will be required to obtain advance certification from its primary federal supervisor that it satisfies the eligibility criteria necessary to qualify for the phaseout. In addition, all finders fees must be paid in cash, except that an institution may utilize as finders fees any merchandise it owned on December 1, 1980. In order to minimize any potential adverse effect on competing depository institutions during the phaseout of finders fees, a qualifying institution will not be permitted to advertise the continued availability of finders fees by television, radio, or other mass media of general circulation (such as newspapers and magazines). However, direct contact with depositors or former sponsors of depositors or display or distribution of promotional materials in an institution's offices will be permitted.

Pursuant to its authority under Title II of Public Law 96-221, 94 Stat. 142 (12 U.S.C. 3501 *et seq.*), to prescribe rules governing the payment of interest and dividends on deposits of federally insured commercial banks, savings and loan associations, and mutual savings banks, effective December 31, 1980, the Committee amends Part 1204 (Interest on Deposits) by adding § 1201.114 as follows:

PART 1204—INTEREST ON DEPOSITS

* * * * *

§ 1204.114 Phaseout of finders fees.

(a) Notwithstanding the provisions of 12 CFR § 1204.110, during the period from December 31, 1980 through June 30, 1982 (the "phaseout period"), any fee paid by a qualifying depository institution to a person who introduces a depositor to the institution (a "finders fee") shall not be regarded as a payment of interest to the depositor for purposes of determining compliance with interest rate ceilings, if the institution complies with all of the requirements set forth in subsection (b). For purposes of this section, a qualifying depository institution is a depository institution that has been certified by its primary federal supervisor to have demonstrated that finders fees have accounted for 25 per cent or more of its outstanding domestic small-denomination (under $100,000) time and savings deposits, on average, over the ten-calendar quarter period ending June 30, 1980.

(b) A qualifying depository institution must comply with all of the following requirements to be eligible for the phaseout granted under subsection (a) of this section:

(1) During the phaseout period, the maximum amount of small-denomination (under $100,000) time and savings deposits that may be raised through the use of finders fees may not exceed 85 per cent of the amount of domestic small-denomination (under $100,000) time and savings deposits on which finders fees had been paid that mature in the semi-annual period ending June 30, 1981, 60 per cent of the amount of such deposits that mature in the semi-annual period ending December 31, 1981, and 40 per cent of the amount of such deposits that mature in the semi-annual period ending June 30, 1982. Provided, however, that during the phaseout period, the amount of small-denomination (under $100,000) time and savings deposits on which finders fees are paid may not exceed the amount of domestic small-denomination (under $100,000) time and savings deposits outstanding on June 30, 1980 on which finders fees had been paid.

(2) Any maturing domestic small-denomination (under $100,000) deposit on which a finders fee had been paid and that is renewed, whether automatically or otherwise, whether or not a finders fee is paid upon renewal, must be included in the amount of deposits raised through the use of finders fees for the purpose of determining compliance with the above per cent limitations.

(3) All finders fees must be paid in cash, except that an institution may utilize as finders fees any merchandise it owned on December 1, 1980.

(4) Any advertisement, announcement or solicitation concerning the continued availability of finders fees during the phaseout period by an institution shall be limited to contacting directly the institution's depositors or former sponsors of depositors or to displaying or distributing promotional materials in an institution's offices. During the phaseout period, an institution shall not advertise the continued availability of finders fees by television, radio, billboards or other mass media of general circulation (such as newspapers, magazines).

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,

Executive Secretary of the Committee.

[FR Doc. 80-40059 Filed 12-23-80 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 298

[Docket No. 33314; ER 1123A]

Classification and Exemption of Air Taxi Operators

December 18, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Affirmation of interim rule.

SUMMARY: The CAB is affirming an interim rule increasing the maximum capacity of aircraft permitted for use by air taxi operators from 30 to 60 seats. The change is made at the Board's own initiative.

The affirmation is adopted on December 18, 1980 although the rule was effective May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: On September 6, 1978, the Board issued a notice of proposed rulemaking (EDR-361, 43 FR 39587, September 6, 1978), increasing the size of aircraft permitted for use by air taxi operators from 30 to 60 seats. Congress then passed the Airline Deregulation Act of 1978, Pub. L. 85-726, October 24, 1978. Section 416 of that Act provides a statutory exemption from certification for air carriers operating aircraft with less than 56 rather than 60 seats as provided in the Notice of Proposed Rulemaking (NPRM). Although the statutory limitation was passed after the NPRM, the Deregulation Act gave the Board power to increase

the size limit if required in the public interest.

The Board issued a rule (ER–1123, 44 FR 30080, May 24, 1979), raising the seat limitation to 60 seats as proposed in EDR–361, accompanied by a request for comments (EDR–380, 44 FR 30080, May 24, 1979), in light of the Deregulation Act provision. The rule was effective May 17, 1979. The Board reasoned that the 60-seat limitation was preferable to a 56-seat limitation because the former would include the Nihon YS–11 aircraft and other aircraft that might be developed to efficiently serve small and medium-sized communities. As pointed out in ER–1123, there is a natural gap between 60-seat or smaller aircraft and the jet aircraft operated by most certificated carriers.

Comments were submitted by the Consumer Airline Association of America (the "CAAA"), Hawaiian Airlines and DHL Airlines. The CAAA fully supported the 60-seat limitation for the reasons set forth in ER–1123. Hawaiian Airlines argued that commuter carriers with over 30 seats should not be exempt from the regulations relating to baggage liability and denied boarding compensation on the grounds that is is inequitable to require certificated carriers to comply with the consumer-protection provisions while granting an exemption to commuter carriers operating comparable aircraft. In addition, it argued that air taxi passengers should be given the same protections and benefits provided to certificated carriers passengers. DHL Airlines and the CAAA filed comments vigorously opposing Hawaiian's arguments. The CAAA alleged that Hawaiian Airlines set forth no facts showing that Hawaiian has been or could be affected by the rule. DHL Airlines argued that the current exemption does not give commuter carriers any competitive advantage over certificated carriers. However, the 60-seat limitation aids consumers, because DHL can offer lower fares to passengers willing to accept non-jet service with fewer consumer protections.

ER–1123 continues the exemption of all air taxis from the denied boarding compensation and baggage liability rules. Although the Board is investigating the costs and benefits of the current rule and possible alternatives, the current exemption remains in effect for the reasons stated in ER–1123. In requesting comments, the Board was primarily concerned with whether the public interest required the Board to raise the 56-seat ceiling for air taxis to 60 seats. Because no adverse comments have been received on that narrow issue, the Board affirms the final rule raising the capacity of aircraft permitted for use by air taxi operators to 60 seats.

(Secs. 204(a) and 416(b), Pub. L. 85–726, as amended, 72 Stat. 743, 771; 49 U.S.C. 1324, 1386)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–40199 Filed 12–23–80; 8:45 am]

BILLING CODE 6320–01–M

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14 CFR Part 323

[Regulation PR–228; Procedural Regulations Amendment No. 4 to Part 323; Docket: 37905]

Terminations, Suspensions, and Reductions of Service

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is amending its rules to require airlines to maintain schedule listings of some flights for which a termination or suspension notice has been filed, until discontinuance is permitted by the Board. The CAB is also limiting the effectiveness of a termination notice to 90 days after the intended date stated in that notice, except when the carrier is required to serve longer by the Board.

DATES:

Adopted: December 18, 1980.

Effective: Section 323.16 becomes effective on January 23, 1981. Section 323.17 is effective December 18, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428; (202) 673–5442.

SUPPLEMENTARY INFORMATION: By PDR–70, 45 FR 20116, March 27, 1980, the Board proposed to add two new sections to 14 CFR Part 323, its rule governing notices that airlines must file prior to terminating, suspending, or reducing air service at a community. It proposed to require carriers to continue to list in the Official Airline Guide, and other published schedules, flights for which a termination notice has been filed. The flight would have to be listed until the Board decided not to require the carrier to continue the service, although notice could be added indicating that the flight may be discontinued subject to government approval. This requirement would ensure that the affected community would not be "erased from the airline map" and that the public would have schedule information in the event the Board required the carrier to maintain service beyond the intended termination date. The Board has the authority under section 419 of the Act to compel carriers to maintain their service at a community.

The Board also proposed to require a carrier that does not discontinue service within 60 days of the date stated in its notice, or within 60 days after the Board permits the discontinuance, to file a new notice before any later discontinuance. The Board felt that the effectiveness of a termination notice should be limited to 60 days after the ending date projected in the notice, so that the Board and other carriers could keep abreast of "real" levels of service, and the public would not be surprised by a sudden cessation of that service.

No commenter objected to the second proposal. Eastern did suggest that carriers be allowed 90 days to suspend a flight for which they gave a 90-day notice. It stated that this would avoid the possibility that a carrier would have to file a new 90-day notice before the expiration of the original 90-day notice period. We have decided to accede to Eastern's request and, further, to apply the 90-day period to 60-day and 30-day notices as well. We have decided that a 90-day period will not undermine the public's reliance on those notices in planning for changes in service. Delays longer than 90 days in carrying out the proposed suspension will require the filing of a new notice. New notices will be subject to the same procedures as the original ones.

The Airline Passenger Association was the only commenter in complete agreement with the first proposal. The others (Piedmont, American, Delta, Eastern, Frontier, Pacific Southwest Airlines, Trans World Airlines, United, USAir, and Ozark) either opposed it altogether or sought some modifications.

Frontier questioned the Board's statutory authority to adopt a rule requiring carriers to maintain their schedule listings. United contended that it would violate the spirit of deregulation to impose additional procedures, beyond those required by the Act on carriers wishing to leave a market. United viewed this as contrary to the free-exit provisions of the Act. Transamerica suggested that the rule may conflict with section 401(e)(4) of the Act, which forbids the Board from imposing certificate restrictions that restrict a carrier's scheduling.

Several airlines foresaw problems if the rule were adopted. They were concerned that it would increase public confusion, add to the complexity of the OAG, increase carrier costs, and impose a burden on carriers because of the large number of flights affected.

United stated that all new scheduled flights would have to be given distinct flight numbers to avoid duplication with those that it proposed to terminate. It would have to continually update its computer reservation system as the proposed deletion were approved, and convey this additional information to reservation agents. United also claimed that the continued schedule listing would prompt more people to make reservations on soon-to-be-cancelled flights and thus require it to re-ticket and provide explanations to many more passengers. Similar concerns were expressed by other commenters. According to United, these added responsibilities would require thousands of additional man-hours and, together with the added publication costs, would amount to several hundred thousand dollars in compliance costs without furthering the provision of essential service at the communities affected.

In the carriers' view, this rule would cause public confusion because a requirement to continue schedule listings might give the public false impression that a particular carrier was serving a point after the Board had allowed that carrier to terminate service there. This would occur when a carrier learned that it could terminate service after its new schedule has been published or submitted to the OAG.

Finally, United stated that conforming amendments to Parts 231 and 234 of the Board's rules would be necessary if this proposal were adopted.

After reviewing these comments, the Board has decided to adopt the rule, but to narrow its scope. Sixty-day notices for suspensions of the last nonstop or single-plane service in a market (§ 323.3(b)) will not be covered by this rule. Also, 90-day notices must be filed by an airline wishing to terminate all its service at a multi-carrier point (§ 323.3(a)(1)) will not be covered by this rule. Schedule listings for these flights will not have to be maintained at the end of the notice period. This should significantly reduce the compliance burden of carriers and the impact on their costs. Since fewer flights will be affected, the OAG should not become noticeably more complex.

Instead, the rule will apply only to 90-day notices (30 days for commuters) that are filed when a carrier intends to reduce service to a point below the essential level. The Board is required by section 419 of the Act to prohibit these terminations or reductions until replacement service is found. Thus, these are the flights that are most likely to be continued after the intended termination date and for which deletion from the OAG or other schedule listing would be most likely to create confusion.

We do not consider this rule, as modified, to be beyond our statutory authority, in conflict with section 401(e)(4) of the Act, or contrary to the spirit of deregulation. The Deregulation Act (Pub. L. 95–504) provides, as a general rule, that an airline may leave a community that it does not wish to serve. It includes, however, an exception to that rule, section 419, that requires the Board to prohibit an airline from exiting a community if its departure would leave that community without at least essential air service. The Board has discretion in its administration of the essential service program. We find that requiring airlines to maintain some schedule listings is important to the implementation of this program. This rule will ensure that the public is aware that there is still air service to the community that is the subject of the notice. Failure to ensure this would to some extent cut off that community from the national air transportation system, contrary to section 419(f) of the Act.

We do not view section 401(e)(4) of the Act to be a bar to the adoption of this rule. That provision does not apply to a requirement that carriers maintain some schedule listings. Section 401(e)(4) prohibits the Board from imposing certificate conditions that restrict an air carrier from adding to or changing its schedule. The rule adopted here will not require an airline to offer a flight at any particular time. It merely requires a carrier to continue to list some flights that it offers until the Board permits their termination.

We do not agree that this rule would increase public confusion. it is possible, as some commenters claimed, that a carrier will be listed as serving a point after the Board has allowed it to terminate service there. This would occur only if a replacement carrier had instituted service after the publication deadline for the schedule listing. While this may create some confusion, it will be less than that caused under the current system, where the former carrier may withdraw its listing and leave no carrier listed as serving the point even though there is new air service from a replacement carrier. The absence of any listing may lead potential passengers to conclude that the point is without air service. Under this rule, potential passengers will now have the information needed to contact the former carrier, who can direct them to its replacement.

We also do not agree that this rule calls for a change in Parts 231 or 234. Part 231 requires carriers to file their schedules with the Board. Part 234, § 234.5, requires carriers' published schedules to conform to the schedule filed with the Board. This obligation remains unchanged. A carrier will have to continue to list some flights that it is proposing to terminate in its Part 231 schedule until the Board allows it to end that service. As with other schedule listings, the carrier may place an asterisk next to the flight with a notice stating that it will be terminated subject to government approval.

Since carriers could partially avoid the requirements of this rule by filing several notices immediately, the Board finds good cause to make § 323.17 (limiting the effectiveness of notices to 90 days) effective immediately. Section 323.16 (requiring the maintenance of some schedule listings) will apply to those notices filed after January 23, 1981.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 323, *Terminations, Suspensions, and Reductions of Service,* as follows:

Part 323—Terminations, suspensions, and reduction of service

1. The authority for Part 323 is revised to read:

Authority: Secs. 204, 401, 411, 416, 419, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 769, 771, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1381, 1386, 1389.

2. The table of contents is amended by adding two new sections, to read:

Sec.

* * * * *

323.16—Listings in schedule publications.
323.17—Delays in discontinuing service.

3. New §§ 323.16 and 323.17 are added, to read:

§ 323.16 Listings in schedule publications.

Each air carrier filing a notice under paragraphs (a)(2), (a)(3), (a)(4), or (c) of § 323.3 shall continue to list the affected flights in all generally-distributed schedule publications in which the flight was listed before the notice. The listings shall continue until the Board permits the flights to be discontinued. The listings may include a notice stating that the flights are "to be discontinued as of (date) subject to government approval."

§ 323.17 Delays in discontinuing service.

If transportation that is the subject of a notice under this part is not discontinued within 90 days of the intended date stated in the notice, a new notice must be filed before the service may be discontinued. However, if the Board requires the carrier to provide service beyond the stated date, the carrier need not file a new notice if it discontinues the service within 90 days after the Board permits it to do so.

By the Civil Aeronautics Board:
Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-40197 Filed 12-23-80; 8:45 am]
BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-17388]

Form U-4, The Uniform Application for Securities Industry Registration

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of revised Form U-4.

SUMMARY: The Commission is adopting revised Form U-4, the Uniform Application for Securities Industry Registration, which was developed and submitted to the Commission by an ad hoc committee of the North American Securities Administrators Association ("NASAA," the organization of state securities administrators). The revised form will, among other things, reflect the provisions of the Securities Acts Amendments of 1975 (the "1975 Amendments").

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. York, Division of Market Regulation, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549, (202) 272-2376.

SUPPLEMENTARY INFORMATION: The Commission solicited comments to the proposed revisions of Form U-4 in Securities Exchange Act Release No. 16977 (July 10, 1980).[2] This action adopts the revised form, essentially as proposed, with minor modifications made in response to comments on the proposal.

Background

Form U-4, the Uniform Application for Securities Industry Registration,[2] is the personnel form which the Commission requires to be filed by a registered broker or dealer who is not a member of a registered national securities association, on behalf of associated persons of such broker or dealer. The present Form U-4 is also accepted as a uniform application form for associated persons by 46 states, all national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD").[3]

The form was developed by an ad hoc committee of the North American Securities Administrators Association ("NASAA," the organization of state securities administrators) which included representatives from the Commission, the NASD, the New York Stock Exchange, Inc., ("NYSE"), and other self-regulatory organizations. It was adopted in its present format in 1975.[4]

The form was adopted prior to the enactment of the Securities Acts Amendments of 1975 (the "1975 Amendments") and therefore did not reflect fully and accurately the provisions of Section 3(a)(39) (D) and (E)[5] and Section 15(b)(4)(A)[6] of the amended Securities Exchange Act of 1934 (the "Act"). Section 3(a)(39) of the Act designates five categories wherein a person is subject to a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization.[7] Section 15(b)(4) of the Act indicates the type of conduct for which the Commission may impose limitations upon a broker or dealer and persons associated with a broker or dealer.[8]

Therefore, the NASAA ad hoc committee reconvened to consider the necessary revisions of the form. In addition to reflecting the 1975 Amendments it was apparent that certain other revisions of Form U-4, both in format and substance, were appropriate. For example, the committee decided to solicit additional data from the applicant so that the form could be used as a basis for completing Item 10(a) of Form BD relating to statutory disqualifications.[9] Furthermore, certain revisions to the form were necessary so that it would continue to be accepted as a uniform form by the states and the self-regulatory organizations.[10]

The NASAA ad hoc committee completed its work on Form U-4 in February 1980 and submitted the revised form to the NASAA Uniformity Committee in April 1980. Subsequently, the Uniformity Committee requested comments from the NASAA membership concerning the revised form.

In addition to the comments of the NASAA membership, the NASAA Uniformity Committee sought public reaction to the revised form prior to adoption by the Board of Directors. Accordingly, the Commission published for comment the proposed revisions of Form U-4 in Securities Exchange Act Release No. 16977 (July 10, 1980).

The NASAA ad hoc committee met in September 1980 to consider the comments received by NASAA and the Commission concerning the revised form. The majority of the comments supported the revised form. However, the committee decided to make the following changes to the previously proposed form: 1) the name of the form has been changed (see footnote 2); 2) the certification clauses on page 4 have been rewritten for improved clarity; and 3) the form has been adapted for computer use. Subsequently, the NASAA Board of Directors adopted the form as amended and recommended by the advisory committee. The Commission has also reviewed the public comments and concurs with the actions of the ad hoc committee. As a result, the Commission adopts the revised Form U-4.

II. The Revised Form U-4

The overall structure of the revised form is similar to the old form. The first part of the form is to be completed by both the applicant and the broker or dealer with which the applicant will be associated. It contains general

[1] 45 FR 47853 (July 17, 1980); 20 SEC Docket 640.

[2] 17 CFR 249.502. Formerly, the Uniform Application for Securities and Commodities Industry Registration. Because the commodities industry does not use Form U-4, reference to that industry has been omitted from the name of the form.

[3] In regard to representatives associated with brokers or dealers, the term "application" is somewhat inappropriate since, unless a disqualifying condition exists or the requisite examination requirements is not met, acceptance of the form for filing automatically qualifies the individual.

[4] Securities Exchange Act Release No. 11424 (May 16, 1975), 7 SEC Docket 2.

[5] 15 U.S.C. 78c (1976).

[6] 15 U.S.C. 78o (1976).

[7] The substance of Section 3(a)(39) (D) and (E) of the Act is reflected in questions 28B and 29B of the revised Form U-4.

[8] The substance of Section 15(b)(4)(A) of the Act is reflected in questions 28A of the revised Form U-4.

[9] An affirmative answer to those questions on Form U-4 relating to statutory disqualifications will alert a broker or dealer that Item 10(a) of Form BD must be amended to reflect this information.

[10] During its April 1980 meeting, the NASAA membership approved the implementation of a Central Registration Depository ("CRD"), to be activated on January 1, 1981. The initial focus of the CRD is a consolidated nationwide system for registering securities agents. Therefore, Form U-4 is essential to the orderly development of the CRD program.

information regarding the self-regulatory organizations and jurisdictions with which the associated person is to be registered and the identity of the prospective employer. It also indicates the capacity in which the applicant will be employed and whether or not he or she has passed an examination for registration or been granted a waiver or qualified for an exemption.

The second part of the form, to be completed by the applicant, contains information concerning the person's personal and educational background and business associations; a series of questions concerning any disciplinary proceedings or court actions brought against such person; and information about criminal convictions. The form also requires various certifications by both the broker or dealer and the applicant.

Several changes in format have been made in order to improve clarity and eliminate duplicative information. As noted above, new questions have been added in order to include information required by the 1975 Amendments and Item 10(a) of Form BD. The revised Form U-4 continues to request the information required by Rule 17a-3(a)(12) and therefore may be used by a broker or dealer to satisfy the record retention requirements imposed by that rule.[11]

Accordingly, the Commission is amending Title 17, Chapter II, of the Code of Federal Regulations by revising § 249.502.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§ 249.502 Form U-4, personnel form, to be filed by registered brokers or dealers not members of a registered national securities association, for associated persons of such brokers or dealers.

Copies of the revised form have been filed with the Office of the Federal Register as part of the original document. Copies may be obtained from the Office of Publications, 500 North Capitol Street NW., Washington, D.C. 20549.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40087 Filed 12-23-80; 8:45 am]

BILLING CODE 8010-01-M

[11] 17 CFR § 240.17a-3(a) (12). Rule 17a-3(a)(12) requires an associated person to complete a questionnaire or application for employment to be approved by the member, broker or dealer. The information required by Rule 17a-3(a) (12) is covered in the background section and several of the questions of Form U-4. *See, e.g.*, questions 27F and 28C of the revised form.

DEPARTMENT OF THE TREASURY
Customs Service

19 CFR Part 162

[T.D. 81-1]

Recordkeeping, Inspection, Search, and Seizure; Waiver of Bond Requirement for Property Seized in Violation of Customs Laws Because of Inability To Post Bond

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow the district director of Customs, upon satisfactory proof of a person's financial inability to post bond, to waive the requirement for a bond if that person's property, valued not in excess of $10,000, was seized in violation of the Customs laws. The bond requirement has been held unconstitutional because it may deprive the person whose property has been seized of an opportunity for a judicial hearing to determine liability solely because of inability to post a bond.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph Priddy, Entry, Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5746).

SUPPLEMENTARY INFORMATION:

Background

Under section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608), a person may file a claim for property valued not in excess of $10,000, which was seized in violation of the Customs laws. The claim must be filed with the district director of Customs within 20 days of the publication of the notice of seizure. Upon filing the claim and posting a bond in the penal sum of $250, the claim is transmitted by the district director to the U.S. attorney who commences condemnation proceedings which determine liability. Section 162.47(b), Customs Regulations (19 CFR 162.47(b)), implements the bond requirement of section 608.

The U.S. Court of Appeals in *Wiren* v. *Eide*, 542 F. 2d 757, (9th Cir. 1976), held the application of the bond requirement in section 608 to be unconstitutional with respect to indigent persons on due process and equal protection grounds. The Court concluded that the Fifth Amendment prohibits the Government from depriving an individual whose property has been seized of an opportunity for a hearing solely because of inability to post a bond. The Court further held that the interest of the Government in enforcement does not outweigh the possibility of wrongful forfeiture due to lack of opportunity for a hearing. The existence of voluntary remission or mitigation procedures on the part of Customs does not affect the decision.

Currently, § 162.47 does not conform with the Court decision or with actual practice which is to waive the bond upon satisfactory proof of financial inability to post the bond. This document amends § 162.47 to allow the district director to waive the bond requirement upon satisfactory proof by the person claiming an interest in the seized property of financial inability to post the bond.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Inasmuch as this amendment grants rights not presently provided and places no affirmative duty on the public, notice and public procedure are found to be unnecessary pursuant to 5 U.S.C. 553(b)(B), and, pursuant to 5 U.S.C. 553(d), a delayed effective date is not required.

Inapplicability of E.O. 12044

The document is not subject to the Treasury Department directive published in the **Federal Register** on November 8, 1978 (43 FR 52120), implementing Executive Order 12044, "Improving Government Regulations," because the subject matter was in process before May 22, 1978, the effective date of the directive.

Regulation Determined to be Nonsignificant

In the directive implementing Executive Order 12044, the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the **Federal Register** and codfied in the Code of Federal Regulations to be "significant." However, regulations which are nonsubstantive, essentially procedural, do not materially change existing or establish new policy, and do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, may, with Secretarial approval, be determined not to be significant. Accordingly, it has been determined that this document does not meet the Treasury Department criteria in the directive for "significant" regulations.

Drafting Information

The principal authors of this document were Shannon McCarthy and John Elkins, Regulations and Research

Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendment to the Regulations

§ 162.47 [Amended]

Section 162.47, Customs Regulations (19 CFR 162.47), is amended by:

(1) Substituting the words "Except as provided in paragraph (e) of this section, the" for "The" in the first sentence of paragraph (b),

(2) Adding the words ", if required," after "bond" in paragraphs (c) and (d), and

(3) Adding a new paragraph (e) to read as follows:

§ 162.47 Claim for property subject to summary forfeiture.

* * * * *

(e) *Waiver of bond.* Upon satisfactory proof of financial inability to post the bond, the district director shall waive the bond requirement for any person who claims an interest in the seized property.

(R.S. 251, as amended, secs. 608, 624, 46 Stat. 755, as amended, 759 (19 U.S.C. 66, 1608, 1624))

William T. Archey,

Acting Commissioner of Customs.

Approved: December 15, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 80-40325 Filed 12-23-80; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 353

Antidumping Duty Order; Electric Motors From Japan

AGENCY: International Trade Administration, U.S. Commerce Department.

ACTION: Final rule: Antidumping duty order.

SUMMARY: After conducting separate investigations under the Antidumping Act of 1921, as amended, and the Tariff Act of 1930, as amended, the U.S. Department of Commerce and the U.S. International Trade Commission have determined that certain electric motors imported from Japan are being sold at less than fair value and that these sales are materially injuring a U.S. industry. All unappraised entries of this merchandise made on and after June 20, 1980—the date from which final assessment of duty has been suspended—will be liable for the possible assessment of special dumping duties. Further, a deposit of estimated antidumping duties must be placed on all such entries made on and after publication of this order in the **Federal Register**.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, Washington, D.C. 20230 (202-377-1777).

SUPPLEMENTARY INFORMATION: On June 20, 1980, the Department of Commerce (the Department) published its preliminary determination, stating that it had reason to believe or suspect that certain industrial electric motors imported from Japan are being, or are likely to be, sold in the United States at less than fair value (45 FR 41687). This determination did not cover submersible well pump motors, which were excluded from the investigation. On November 6, 1980, after a 60-day extension of its deadline for making a final determination on this case, the Department announced that it had found that certain large motors were being sold at less than fair value and that it was suspending its investigation for small motors (45 FR 73723).

In accordance with section 735(b) of the Tariff Act of 1930, as amended (93 Stat. 170, 19 U.S.C. 1673d(b)), the U.S. International Trade Commission determined that an industry in the United States is being materially injured by reason of imports of the motors subject to the Department's final determination. On December 12, 1980, it notified the Department of this decision.

In accordance with section 736 of the Act (93 Stat. 172, 19 U.S.C. 1673e), I direct U.S. Customs officers to assess an antidumping duty equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price for all entries of certain large motors imported from Japan, as herein defined, subject to the "Withholding of Appraisement" notice published in the **Federal Register** on June 20, 1980 (45 FR 41687) and all future entries of said merchandise until further notice.

For the purpose of this notice, the term "certain large electric motors" means electric motors of not less than 150 hp but not greater than 500 hp, not including submersible well pump motors, provided for in item numbers 682.4545, 682.4600, 682.5010, and 682.5030 of the Tariff Schedules of the United States Annotated. On or after the date of publication of this notice, Customs officers shall require, at the same time as estimated normal customs duties on the merchandise are deposited, a 6.7 percent *ad valorem* deposit of estimated antidumping duties, pending liquidation of entries of the subject merchandise, or withdrawals from warehouse, for consumption.

I hereby make public this determination, which constitutes an antidumping duty order with respect to large electric motors from Japan.

Accordingly, Annex I, Part 353 of the Commerce Regulations (45 FR 8208) is being amended by adding the following to the list of antidumping duty orders currently in effect:

Merchandise	Country	Decision
Electric Motors	Japan	(45 FR)

(Sec. 736 of the Act (93 Stat. 172, 19 U.S.C. 1673e), and § 353.48 of the Department of Commerce Regulations (19 CFR 353.48, 45 FR 8204).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

December 19, 1980.

[FR Doc. 80-40289 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

20 CFR Part 903

Access to Records; Correction

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Final rule; correction.

SUMMARY: This document corrects the numbering of the subdivisions of a paragraph in the final regulations issued by the Joint Board for the Enrollment of Actuaries relating to records pertaining to individuals which were published on January 8, 1976 (41 FR 1493, 1496). The subdivisions were designated in Roman numerals. They should have been designated by Arabic numerals.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Executive Director, Joint Board for the Enrollment of Actuaries (202) 376-0767.

Accordingly, the subdivisions numbered (i) through (v) of 20 CFR 903.5(f) are corrected to read (1) through (5).

(5 U.S.C. 552a)

Dated: December 18, 1980.

Rowland E. Cross,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 80-40150 Filed 12-23-80; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR 62a

[DoD Instruction 1010.5] [1]

Education and Training in Alcohol and Drug Abuse Prevention

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule establishes the Department of Defense education and training policy for the prevention of alcohol and drug abuse by military and civilian personnel in compliance with the provisions of Part 62 of this title, "Alcohol and Drug Abuse by DoD Personnel," that became effective August 25, 1980. The Department of Defense shall conduct a program to educate and train all military and civilian personnel aimed toward preventing alcohol and drug abuse and take other effective measures to combat problems caused by alcohol and drug abuse.

EFFECTIVE DATE: December 5, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. J. Mazzuchi, Office of the Assistant Secretary of Defense (Health Affairs), Office of Drug and Alcohol Abuse Prevention, The Pentagon, Telephone 202-695-6800.

Accordingly, 32 CFR Chapter I, is amended by adding Part 62a, reading as follows:

PART 62a—EDUCATION AND TRAINING IN ALCOHOL AND DRUG ABUSE PREVENTION

Sec.

62a.1 Purpose.
62a.2 Applicability.
62a.3 Definitions.
62a.4 Policy.
62a.5 Responsibilities.

Authority: 10 U.S.C. 133.

§ 62a.1 Purpose.

This Instruction states the DoD education and training policy in execution of Part 62, "Alcohol and Drug Abuse by DoD Personnel," August 25, 1980.

§ 62a.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies. The term "Military Service" refers to the Army, Navy, Air Force, and Marine Corps.

§ 62a.3 Definitions.

(a) *Training.* Those teaching and learning functions that develop or improve the competence of health care professionals and paraprofessionals and those DoD personnel responsible for supervision or execution of alcohol and drug abuse prevention programs.

(b) *Education.* Those teaching and learning functions that indoctrinate, orient, or inform personnel about the DoD alcohol and drug abuse prevention programs and resources.

(c) *DoD Civilian Employee.* A permanent employee of the Department of Defense who is a U.S. citizen and who is paid from appropriated or nonappropriated funds.

§ 62a.4 Policy.

(a) The Department of Defense shall educate and/or train all military commanders, military and civilian supervisors, and program personnel concerning DoD alcohol and drug abuse prevention policy and effective measures to alleviate problems associated with alcohol and drug abuse. Other military and civilian members shall also be provided appropriate alcohol and drug abuse education. To the extent feasible, education shall be offered to family members on a voluntary basis.

(b) Specific education or training shall be developed for each of the following groups and shall include references to both the military and civilian aspects of the program.

(1) *Military Personnel.* (i) *At Initial Entry.* (A) *Enlisted Personnel.* The emphasis of initial entry alcohol and drug abuse education shall be on prevention. Desired behavior, credible role models, and healthy alternatives shall be presented as well as the disciplinary, career, and health consequences of abuse. Recruits shall also be made aware of counseling and treatment resources and procedures and their responsibilities, not only to themselves but to their peers. Alcohol and drug abuse instruction shall be compatible with the indoctrination of recruits in the standards of discipline, performance, and behavior required by their particular Military Service. This education shall be completed before the recruit reports to the first permanent duty station.

(B) *Officer and Warrant Officer Candidates.* Education for cadets, midshipmen, and other officer and warrant officer candidates shall, in addition to § 62a.4(6)(1)(i)(A), emphasize the duties and responsibilities of junior leaders in the alcohol and drug abuse prevention effort, to include their responsiblities in creating and maintaining military discipline and enforcement of the law. The causes, symptoms and prevalence of abuse, intervention and referral techniques, and post-treatment responsibilities of junior leaders shall also be addressed. Education shall be completed before commissioning or within 90 days after entry on active duty.

(C) *Health Care Professionals.* During initial orientation classes, training shall be conducted in the diagnosis, counseling, treatment, and referral of alcohol and drug abusers, as appropriate, and in the DoD policy regarding abuse.

(D) *Program Staff.* Training shall normally be conducted and completed not more than 60 days after assignment for professionals and paraprofessionals assigned to alcohol and drug abuse program staffs in those areas relevant to their specific duties.

(ii) *At Permanent Change of Station (PCS).* (A) *Service Members (E-1 through E-4).* Education shall be conducted within 60 days after each PCS and shall emphasize the legal consequences of abuse under both the Uniform Code of Military Justice and the local laws, and the alternatives to abuse available at the local installation and neighboring community.

(B) *Leaders (E-5 through E-9 and Officers).* Education shall be conducted within 60 days after each PCS and shall emphasize the command-unique elements of the alcohol and drug abuse program, the scope of the local alcohol and drug abuse problem, local military and civilian resources, opportunities for continuing education and training, and their responsibilities for the maintenance of military discipline and the enforcement of the Uniform Code of Military Justice.

(iii) *During Professional or Military Education.* (A) *Junior Officers (0-1 through 0-3) and Noncommissioned Officers (E-5 through E-7).* Education shall emphasize the responsibilities of junior leaders in the alcohol and drug abuse prevention program, with particular emphasis on deterrence and detection methods, enforcement, counseling, motivation skills,

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

intervention and referral techniques, and methods for monitoring the progress of identified abusers in the unit.

(B) *Middle Grade Officers (0–4 and 0–5) and Senior Noncommissioned Officers (E–8 ad E–9).* Education shall emphasize the role and responsibilities of senior leaders in the function of their installation or major command's alcohol and drug abuse prevention program. Areas of particular focus shall be the influence of the senior leader's attitude about alcohol and drug abuse on subordinates, the reasons for and benefits derived from the DoD alcohol and drug abuse program, and the problem of stigma and strategies for diminishing it.

(C) *Senior Grade Officers (0–6 and above.)* Education shall emphasize the need for vigorous command support for the alcohol and drug abuse program, the law enforcement, prevention, and performance aspects of the problem, the federal response, and the intervention techniques for senior and executive-level personnel.

(D) *Health Care Personnel.* Continuing education and training shall be provided for health care professionals in those areas of alcohol and drug abuse relevant to their duties. Areas of particular focus shall be intervention, diagnosis, counseling, treatment, and referral.

(E) *Program Staff.* Continuing education and training shall be made available for the program staff, especially for those involved in the rehabilitation process. Areas of particular focus shall be intervention, counseling, and educational techniques.

(iv) *After an Alcohol or Drug-Related Incident.* Motivational education shall be provided for identified abusers who are not physically or psychologically dependent. Normally, education shall be conducted after duty hours and shall focus on the influence of the peer group on behavior, the identification and clarification of the attendee's attitudes and values, the impact and consequences of continued abuse, and the application of decisionmaking skills to resolution of the attendee's alcohol and/or drug abuse problem.

(2) *DoD Civilian Employees.* (i) *Nonsupervisors.* Orientation shall be conducted on DoD policy and Military Service or DoD Component programs regarding alcohol and drug abuse within the first 6 months of initial employment by the Department of Defense. Orientation shall emphasize the legal, career, and health consequences of abuse and the counseling, treatment, and rehabilitation opportunities available.

(ii) *Supervisors.* Orientation shall be conducted within the first 6 months after designation of supervisory responsibilities. Orientation shall emphasize the role of the supervisor in the alcohol and drug abuse prevention program, the symptoms of abuse, especially as they relate to job performance, intervention and referral techniques, and the post-treatment responsibilities of the supervisor. Continuing education shall also be made available on a regular basis by local commands, with the focus on the command-unique elements of the program and local prevention and treatment resources.

(iii) *Program Staff.* Training shall be conducted for professionals and paraprofessionals assigned to alcohol and drug abuse program staffs in those areas relevant to their specific duties. Training shall be completed not more than 60 days after assignment. Continuing education and training shall also be made available for the program staff, especially for those involved in the rehabilitation process. Areas of particular focus shall be intervention, counseling, and educational techniques.

(3) *Family Members, Military and Civilian.* (i) *DoD Dependents School Students.* Education shall be conducted annually as part of the overall health curriculum for those in grades 1 through 12.

(ii) *Family Members (Outside the United States).* Education shall be provided on a voluntary basis and shall emphasize the local alcohol and drug abuse situation, local alcohol and drug abuse laws, counseling, treatment, and rehabilitation opportunities and procedures, and alternatives to abuse available at the local installation and neighboring community.

(iii) *Family Members in U.S. Locations.* Education shall be offered on a voluntary basis to the extent feasible.

§ 62a.5 Responsibilities.

The *Secretaries of the Military Departments* and other *Heads of DoD Components* shall implement the policy in this Part.

December 17, 1980.

M. S. Healy,

OSD Federal Register Liaison Office, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-40092 Filed 12-23-80; 8:45 am]

BILLING CODE 3810-10-M

32 CFR Part 354

[DoD Directive 5105.21; Amendment No. 2]

Defense Intelligence Agency; Incorporating Organizational Changes

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule amendment.

SUMMARY: This amendment is issued to incorporate organizational changes and to expand § 354.7, Delegation of Authority, in that it now authorizes the Director, Defense Intelligence Agency, to enter into and administer contracts under established DoD regulations.

EFFECTIVE DATE: December 2, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. A. Ehlers, Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense, Washington, D.C. 20301, The Pentagon, 202–695–4281.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–18244 appearing in the **Federal Register** on July 1, 1977 (42 FR 33734) the Office of the Secretary of Defense published the charter of the Director, Defense Intelligence Agency, effective May 19, 1977. Amendment No. 1 was published as FR Doc. 79–19262, appearing in the **Federal Register** on June 20, 1979 (44 FR 36032). This rule further revises Part 354.

Accordingly, 32 CFR, Chapter 1, Part 354, is amended as follows:

PART 354—DEFENSE INTELLIGENCE AGENCY

1. Section 354.4 is amended as follows:

a. By revising subparagraph (c).

2. Section 354.7 is amended as follows:

a. By revising subparagraphs (f) introductory text, (g), (m), (p), and (q), and adding subparagraph (t).

Section 354.4 now reads as follows:

§ 354.4 Organization and Administration.

* * * * *

(c) Staff supervision of the DIA for the Secretary of Defense will be exercised by the Assistant Secretary of Defense (Communications, Command, Control, and Intelligence) with respect to resources, and by the Deputy Under Secretary of Defense (Policy Review) with respect to policy.

* * * * *

Section 354.7 now reads as follows:

§ 354.7 Delegation of Authority.

* * * * *

(f) In accordance with the provisions of 5 U.S.C. § 7532; Executive Order 10450, "Government Personnel Security

Program," August 5, 1954; and 32 CFR 156:

* * * * *

(g) Clear DIA civilian personnel and such other individuals as may be appropriate for access to classified Defense material and information in accordance with the provisions of 32 CFR 156 and Executive Order 11652, "Classification and Declassification of National Security Information and Material," March 8, 1972.

* * * * *

(m) Establish and use imprest funds for making small purchases of material and services other than personal for DIA when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Directive 5100.71,[1] "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

* * * * *

(p) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DIA, pursuant to subsection III.A and V.B. of DoD Directive 5200.8,[2] "Security of Military Installations and Resources," July 29, 1980.

(q) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1,[2] "Department of Defense Directives System," October 16, 1980.

* * * * *

(t) Enter into and administer contracts, directly or through another DoD Component or other Federal Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the Defense Intelligence Agency. Contracting will be accomplished in accordance with applicable laws, DoD regulations and the Defense Acquisition Regulation. To the extent that any law or executive order specifically limits the exercise of such authority to persons at the Secretarial level of the Military Department, such authority will be exercised by the appropriate Under Secretary of Defense.

* * * * *

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

[2] See footnote to paragraph (m) of this section.

(Title 10, U.S.C. Section 2202)

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 19, 1980.

[FR Doc. 80-40279 Filed 12-23-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 50

Demonstrations and Special Events; Interim Rule With Request for Comments

AGENCY: National Park Service, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: This interim regulation with request for comments amends National Park Service regulations governing demonstrations and special events in Washington, D.C. and its environs. This interim regulation sets aside the entire White House Sidewalk (south 1600 Pennsylvania Ave., N.W. sidewalk) and Lafayette Park, except for approximately the northeast quadrant, for the exclusive use of the Inaugural Committee on January 20, 1981. This amendment does not affect the availability of other park areas in the White House area. The other park areas, including approximately the northeast quadrant of Lafayette Park and the Ellipse, are available for demonstration activities in accord with the provisions of 36 CFR 50.19.

The need for this interim rule arose when the United States District Court for the District of Columbia ruled that the Department of the Interior must promulgate regulations specifically governing demonstration activities in the White House area on Inauguration Day. The United States Court of Appeals for the District of Columbia Circuit affirmed the District Court's ruling on December 9, 1980.

This is both an interim regulation, effective immediately, and a request for comments. This interim regulation is necessary in order to comply with the District Court's order as affirmed by the United States Court of Appeals.

DATES: This interim regulation is effective on December 24, 1980 and will remain in effect until revoked, replaced or modified by a final rulemaking publication. Written comments, suggestions, or objections regarding this interim regulation will be accepted until January 23, 1981.

ADDRESSES: Written comments should be directed to: Manus J. Fish, Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, SW. Washington, D.C. 20242.

FOR FURTHER INFORMATION CONTACT: Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240. Telephone 202–343–4338.

George Berklacy, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, Department of the Interior, 1100 Ohio Drive, SW, Washington, D.C. 20242. Telephone 202–426–6690.

SUPPLEMENTARY INFORMATION: The following persons participated in the writing of this regulation: Richard G. Robbins, Office of the Solicitor, R. Craig Lawrence, Assistant United States Attorney and Jim McDaniel National Capital Region, National Park Service.

The United States District Court for the District of Columbia in *Saffron* v. *Wilson,* 481 F. Supp. 257 (D.D.C. 1979) ruled that the plaintiff who was arrested for demonstrating in the Inaugural area in 1973 is

> * * * entitled to exercise his First amendment rights in the White House vicinity on Inaugural Days, free from the threat of arbitrary and capricious interference by defendants, and subject to restriction only pursuant to narrowly-drawn regulations that specify objective criteria, which regulations permit adequate time for judicial review of any restriction imposed (except under emergency conditions), and which regulations satisfy the standards enunciated in *A Quaker Action Group v. Morton,* 170 U.S. App. D.C. 124, 516 F.2d 717 (D.C. Cir. 1975) * * *

Following an appeal by the Government of this ruling, the United States Court of Appeals for the District of Columbia Circuit affirmed the decision of the District Court (Unpublished Opinion, No. 79–2236, December 9, 1980).

In addition to the obligation imposed upon the Department of the Interior by the Court, the Department has obligations to the Inaugural Committee in accord with the provisions of the Inaugural Ceremonies Act of August 6, 1956 (70 Stat. 1049) as amended by the Act of January 30, 1968 (82 Stat. 4), D.C. Code § 1–1201 *et seq.* This Act specifically authorizes the Secretary of the Interior to grant permits to the Inaugural Committee for the use of Federal reservations or grounds in the District of Columbia.

This regulation is intended to fulfill the obligations of the Department of the Interior to provide access for demonstration conduct in the vicinity of the White House on Inauguration Day

and to provide areas for use by the Inaugural Committee for Inaugural activities. The regulation sets aside the entire White House Sidewalk and Lafayette Park except for approximately the northeast quadrant for the exclusive use of the Inaugural Committee for Inaugural activities. Access to this area will be controlled by the Inaugural Committee pursuant to a reserved ticket system. Approximately the northeast quadrant of Lafayette Park and other park areas in the White House area and elsewhere are left available for demonstration activities. Permits for use of the areas will be granted under the National Park Service's regular demonstration permit system as set forth in 36 CFR 50.19. In accord with that system, permits will be granted on a first-come-first-served basis.

There are legitimate government interests in devoting the front of the White House to Inaugural ceremonies on this one special day every four years and these interests cannot be successfully furthered if individuals are entitled to be admitted for demonstration or other purposes unrelated to the Inauguration. Moreover, the regulation narrowly restricts the area necessary to further the legitimate government interests while providing ready access to the immediately adjacent and other nearby areas for demonstration conduct.

Impact Analysis: The National Park Service has determined that this document is not a significant rule requiring preparation of a regulatory analysis under Executive Order 12044 and Part 14 of Title 43 of the Code of Federal Regulations.

Public Participation

It is the policy of the National Park Service, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding these interim regulations to the address noted at the beginning of this rulemaking.

Authority: Sec. 3 of the Act of August 25, 1916 (39 Stat. 535, as amended: 16 U.S.C. § 3); 245 DM I (44 FR 23384); Act of Aug. 6, 1956 (70 Stat. 1049) as amended Act of Jan. 30, 1968 (82 Stat. 4); D.C. Code Ann. § 8–108 (1973); and National Park Service Order No. 77 (38 FR 7478), as amended.

Russell E. Dickenson,

Director, National Park Service.

Approved: December 18, 1980.

In consideration of the foregoing, § 50.19 of Title 36 of the Code of Federal Regulations is accordingly amended by adding a new subparagraph 50.19(d)(1)(vii) as follows:

§ 50.19 Demonstrations and special events.

* * * * *

(d) * * *

(1) * * *

(vii) *Inaugural Ceremonies.* The White House Sidewalk and Lafayette Park, exclusive of the northeast quadrant, for the exclusive use of the Inaugural Committee on January 20, 1981.

[FR Doc. 80–40129 Filed 12–23–80; 8:45 am]

BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH–FRL 1711–4]

Grants for Construction of Treatment Works; Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Deviation to Rule.

SUMMARY: Under the authority of 40 CFR 30.1000, the Environmental Protection Agency (EPA) has issued a class deviation from 40 CFR 35.930–5(b) of EPA's construction grant regulations. We are publishing the class deviation as part of this document.

Section 35.930–5(b) states in part that to receive 85 percent funding any innovative/alternative work must be Step 2, Step 3 or Step 2+3 work.

EPA believes that goals of the construction grant program can be furthered through the consideration of innovative and alternative concepts during the Step 1 facility planning phase. This class deviation allows 85 percent funding for Step 1 facility planning when innovative or alternative concepts are incorporated into the facility plan.

EPA regional offices will determine which facility plan activities will receive the 85 percent funding. Selected activities must fully meet the criteria contained in Part 35 Appendix E for innovative and alternative technology.

Activities which do not fully meet the criteria in Appendix E for innovative and alternative technology are not covered in this deviation. The EPA Regional Offices will review these activities on a case-by-case basis, and if they believe 85 percent innovative and alternative funding is appropriate, the Regional Offices can request the Director, Grants Administration Division to approve a project specific deviation from 40 CFR 35.930–5(b).

EFFECTIVE DATE: December 16, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Harvey Pippen, Jr., Director, Grants Administration Division (PM–216), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755–0850.

C. William Carter,

Acting Assistant Administrator for Planning and Management (PM–208).

December 16, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management (WH–556).

December 8, 1980.

United States Environmental Protection Agency

Date: December 16, 1980.

Subject: Class Deviation from 40 CFR 35.930–5(b).

From Harvey Pippen, Jr., Director, Grants Administration Division (PM–216).

To: Regional Administrators.

This is in response to Henry Longest's September 8, 1980, request for a class deviation from 40 CFR 35.930–5(b) "innovative and alternative technology." This regulation states that to receive 85 percent innovative/alternative (I/A) funding the work must be Step 2, Step 3, or Step 2+3 work. Mr. Longest requested a class deviation to extend the 85 percent I/A funding available under section 202(a)(2) of the Clean Water Act to those portions of Step 1 facility planning which fully meet the definitions and criteria in 40 CFR Part 35 Appendix E. Mr. Longest requested this class deviation to facilitate the implementation of a Program Operation Memorandum promoting the expanded use of Step 1 facility planning funds to encourage grantees to consider a broader range of options for wastewater treatment facillities.

Allowing the use of I/A set-aside funds for the study of I/A alternatives during facility planning will:

(1) Promote cost-effective and environmentally sound solutions to municipal wastewater treatment-related problems.

(2) Promote cost-effective solutions to broader environmental problems in conjunction with municipal point source pollution abatement.

(3) Enhance facility planning and lead to higher quality project planning.

(4) Address a wide range of significant secondary impacts arising from the construction and operation of public owned treatment works.

I am approving a class deviation from 40 CFR 35.930–5(b) to allow EPA Regional Offices to provide additional 10 percent funding, by way of grant amendment, for completed portions of Step 1 work which fully satisfy the innovative and alternative technology guidelines contained in Appendix E to 40 CFR Part 35. If the innovative or alternative work does not meet the criteria specified in Appendix E, the Region may request a deviation on a case-by-case basis.

Dated: December 16, 1980.

Concur:

C. William Carter,

Acting Assistant Administrator for Planning and Management (PM–208).

Dated: December 8, 1980.

Concur:

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management (WH–556).

[FR Doc. 80–40302 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–29–M

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40 CFR Part 52

[A 4 FRL 1708–6]

Approval and Promulgation of Implementation Plans; Kentucky: Conditional Approval of Kentucky's Particulate Part D Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: EPA today announces conditional approval of Kentucky's total suspended particulate (TSP) nonattainment (Part D) plan revisions. The revisions submitted by the Commonwealth contain minor deficiencies which Kentucky has agreed to correct by October 15, 1981. Correction of the deficiencies will not require extensive time or resources from the Commonwealth. The time period allowed for making the corrections is necessary since the Commonwealth's legislature must adopt certain rules before the deficiencies can be corrected. If the deficiencies are not corrected by October 15, 1981, EPA will disapprove the applicable portions of the revisions.

This notice responds to comments received pursuant to EPA's November 15, 1979 proposal notice (44 FR 65781), and EPA's September 18, 1980 reproposal and reopening of comment period notice (45 FR 62163). Comments received in response to the November 15, 1979 notice (44 FR 65781), and EPA responses to those comments as stated in 45 FR 62163, September 18, 1980, will not be repeated in this notice if a commenter references or repeats a previous comment, and EPA's position regarding its previous response has not changed. If a commenter references a previous comment and offers additional comment on the same issue, then EPA's previous response will be referenced and additional information will be offered, as necessary. Any comment not previously addressed by EPA will be fully responded to in this notice.

EFFECTIVE DATE: December 24, 1980.

ADDRESSES: Copies of the materials submitted by Kentucky and the comments received in response to the proposal notices of November 15, 1979 (44 FR 65781) and September 18, 1980 (45 FR 62163) may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Library, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Melvin Russell of EPA Region IV's Air Programs Branch at the Region IV address above, or call (404) 881–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION:

Background

EPA proposed conditional approval of Kentucky's TSP Part D State Implementation Plan (SIP) revisions in the November 15, 1979, **Federal Register**, (44 FR 65781). Extensive comments were received in response to the November 15, 1979 notice. After reviewing the comments along with the material submitted by Kentucky, EPA presented its position in the September 18, 1980 **Federal Register**, (45 FR 62163), Reproposal and Reopening of Comment Period for Kentucky's Particulate Part D Plan Revisions. In the September 18, 1980 notice EPA: (1) Responded to comments received in response to the November 15, 1979 notice, that relate directly to deficiencies found to exist in Kentucky's TSP plan revisions. (2) Clarified those deficiencies noted in the November 15, 1979 notice. (3) Described additional deficiencies discovered in the Kentucky revisions after publication of the November 15, 1979 notice.

EPA is taking final action to conditionally approve certain elements of Kentucky's plan. A discussion of conditional approval and its practical effect appears in a supplement to the General Preamble, 44 FR 38583 (July 2, 1979). The conditional approval requires the State to submit additional materials by the deadline specified in today's notice. There will be no extension of the conditional approval deadline which is being promulgated today. EPA will follow the procedures described below when determining if the State has satisfied the conditions.

1. If the State submits the required additional documentation according to schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the condition is fully met. After review is complete, a **Federal Register** notice will be published proposing or taking final action either to find the condition has been met and approved the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit in a timely manner the required materials needed to meet a condition, EPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and Section 110 (a)(2)(I) restrictions on growth are in effect.

Discussion

The following comments and EPA responses relate to the November 15, 1979 **Federal Register** proposal (44 FR 65781) and the September 18, 1980 **Federal Register** reproposal (45 FR 62163), and are addressed in the manner described above in the SUMMARY section.

1. Comment: Several commenters argued that EPA's policy of conditional approval is not sanctioned by the Clean Air Act and is not a legally effective procedure for lifting the construction moratorium imposed under Section 110(a)(2)(I). The commenters believe that EPA must promulgate a Federal SIP and comply with procedural requirements for such promulgation if the Administrator finds a state plan inadequate. The commenters also claim that conditional approval circumvents the procedural safeguards of Section 307 of the Act and coerces state modification of the plan through threat of disapproval.

EPA Response: A discussion of conditional approval and its practical effect appears in supplements to the April 4, 1979 General Preamble (44 FR 20372) published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), and November 23, 1979 (44 FR 67182).

The Administrator believes that he has inherent authority under the CAA to condition approval of a SIP upon a State's agreement to correct minor deficiencies expeditiously, and that conditional approval is a reasonable approach to the complicated process of plan development which is consistent with the intent of Congress, with the language of the Act and with the Administrator's obligations thereunder.

The Act and existing SIPs provide for a moratorium on construction of major new sources of pollution if a revised plan which satisfies the requirement of Part D is not in effect by July 1, 1979. The purpose of the moratorium on new sources in not to punish a state for failure to control pollution, but rather to prevent the problem from getting worse. The moratorium would postpone construction that would worsen a violation of a national standard until after an acceptable plan is in effect that assures timely attainment of the standard. Where a plan has been revised so as to be in substantial compliance with the requirements of Part D, and the state provides assurances that any remaining deficiencies will be remedied within a short period, imposition of the moratorium on new sources during that period would not serve the Congressional purpose. Therefore, under such circumstances EPA interprets the Act to permit the plan to be conditionally approved as satisfying Part D requirements.

When a state submits a SIP containing minor deficiencies, and the state provides assurances that it will submit corrections on a specified schedule, EPA will conditionally approve the plan. A conditional approval will mean that the moratorium on new sources will not apply unless the state fails to submit corrections by the specified date, or unless the corrections are ultimately determined to be inadequate. Conditional approval is not granted without strong assurance by the appropriate state officials that the deficiencies will be corrected on schedule.

Conditional approval is also consistent with the Administrator's obligation under Section 110(c)(1)(C). That subsection requires the Administrator to promulgate regulations for a state if "the state fails, within 60 days after notification by the Administrator or such later period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." When the Administrator proposes conditional approval, he is essentially notifying the state that further revisions are required to make the plan or regulations fully approvable. If the state fails to satisfy the Administrator's conditions, the Administrator will disapprove the plan or regulations and may then promulgate regulations to correct the deficiency. The state is simply offered the option of correcting the inadequacies itself.

Conditional approval also provides procedural safeguards equivalent to those available when the Administrator promulgates a plan. In the case of Kentucky, for example, the Administrator has proposed to conditionally approve certain provisions. The commenters have had an opportunity to submit extensive written comments and receive EPA's response. This final conditional approval may be challenged in the appropriate United States Court of Appeals within 60 days of the publishing of such conditional approval. The rulemaking and judicial review procedures thus provide opportunities for comment and review similar to those provided for promulgation under Section 307(d).

2. Comment: Commenters questioned what rules are in effect if a plan or regulation is conditionally approved.

EPA Response: EPA intends that the conditionally approved requirements be effective unless the conditional approval is withdrawn for failure to meet the conditions. As noted in the General Preamble, 44 FR 20373–30374, April 4, 1979: "The new requirement does not supersede or replace the old requirement until the source comes into compliance with the new requirement. Instead, the existing requirement must remain an enforceable provision of the SIP, and must co-exist with the new requirement in the applicable implementation plan. The present emission control requirement must be retained because the source must be prevented from operating without controls (or with less stringent controls) while it is moving toward compliance with (or challenging) the new requirement."

3. Comment: Commenters argue that sources are prejudiced by the results in 2 above, since they are required to comply with rules that may be significantly altered.

EPA Response: Because conditional approval is applicable only to plans or regulations with relatively minor deficiencies, it is highly improbable that conditionally approved provisions will be substantially changed. In addition, notices of proposed and final conditional approval, such as today's final action, provide adequate notice to sources of the requirements they will ultimately have to meet if the conditions are met.

4. Comment: Several commenters took issue with EPA's interpretation of reasonably available control technology (RACT), its technical applicability and the legal grounds for enforcing the technical standards.

EPA Response: EPA responded to comments regarding RACT in the September 18, 1980 **Federal Register** (45 FR 62163), in Part A, sections 1, 2, 3. Therein EPA explained at length its legal and technical position regarding the application of RACT to TSP sources affected by Kentucky's nonattainment plan revisions. EPA here references those responses, as its position regarding this issue has not changed.

5. Comment: Several commenters disagree with EPA's position regarding Kentucky Regulation 401 KAR 61:005, as it applies to performance testing for demonstration of compliance purposes. The commenters contend that it should be the state's discretion to determine if performance testing is necessary.

EPA Response: EPA maintains that a performance test should be required for demonstration of compliance. The state may exercise some discretion in determining when and for which sources the demonstration is to occur, but the *means* of demonstration should be a performance test. The performance test is the only certain method of demonstrating compliance under operating conditions.

6. Comment: One commenter contends that Kentucky Regulation 401 KAR 50:055 Section 6, Alternative Emission Reduction Plans, should not be required to contain a provision for public hearing, since any proposals submitted pursuant to this section must be submitted as a SIP revision, and Kentucky regulations already require public hearing procedures for all SIP revisions.

EPA Response: EPA does require that all alternative Emission Reduction Plans be submitted to EPA as SIP revisions; however, 401 KAR 50:055, Section 6, does not indicate that this rule will apply. If Section 6 is amended to clearly state that all alternative emission reduction plans will be submitted to EPA as SIP revisions, then the requirement for public hearing will be inherently met.

7. Comment: Several commenters specifically take issue with EPA's position regarding control of intermittent emissions from various iron and steel making processes.

EPA Response: EPA responded to these commenters at length in the September 18, 1980 **Federal Register** (45 FR 62163); Responses number 3 and 5 and Deficiencies number 6, 7, and 8. EPA here references those responses and deficiencies, as its position regarding this issue has not changed.

8. Comment: One commenter believed that EPA was repromulgating the designation of the City of Newport as nonattainment for TSP, and sought to challenge that designation.

EPA Response: The area was designated nonattainment on March 3, 1978 in the **Federal Register** beginning on page 8962. The **Federal Register** noted that even though the designations were immediately effective, EPA solicited comments for 60 days and stated that EPA would republish revised designations as appropriate. The names and addresses of EPA personnel were included in order that comments on specific State designations could be directed to the appropriate EPA Regional Offices. The nonattainment designation of the City of Newport, Campbell County, Kentucky, was finalized on September 11, 1978, 43 FR 40412 at page 40425. Since the commenter was incorrect in his belief that EPA was repromulgating the desigation in the November 15, 1979 notice, any challenges to that original designation are both untimely and outside the scope of this rulemaking proceeding.

9. Comment: One commenter stated that the requirement for RACT on stationary sources in the City of Newport is unwarranted and would be of insignificant benefit since the TSP nonattainment problem is due to rural fugitive dust.

EPA Response: Fugitive dust, in an industrialized area such as Newport, cannot be considered "rural" fugitive dust. Windblown dust, in this and similar situations is contaminated by the various components which reflect the industrial make-up and transportation activities in the area, and hence, may adversely affect health. The implementation of RACT on stationary sources is necessary to comply with the requirements of Section 172(a), 172(b)(2) and 172(b)(3) of the Clean Air Act.

10. Comment: One commenter took issue with EPA's proposal to disapprove Kentucky Regulation 401 KAR 61:015. In the September 18, 1980 **Federal Register**, 45 FR 62163 at page 62169, EPA proposed to disapprove Section 8(2)(d) of the regulation regarding Existing Indirect Heat Exchangers, because Section 8(2)(d) of the regulation allows sources which are not subject to more strict emission limits, as a result of Kentucky's 1979 revisions, an extension of time (until 1982) to achieve compliance. The commenter contends that it is within Kentucky's discretion to extend the final compliance dates to December 31, 1982, and that it is not within EPA's authority to disapprove this portion of the regulation. This comment was also submitted in response to the November 15, 1979 **Federal Register**, (45 FR 65781).

EPA Response: EPA responded to this issue in the September 18, 1980 **Federal Register**, (45 FR 62163 at pages 62167, Response number 6, and 62169, Deficiency number 10). EPA here references that response and deficiency, as its position regarding this issue has not changed.

11. Comment: One commenter requested clarification of EPA's recommendations regarding Kentucky regulation 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces (BOF). In the September 18, 1980 **Federal Register** (45 FR 62163 at page 62169, EPA stated its belief that available information supports a standard for BOF shops which would restrict the opacity of emissions discharged from BOF shops, excluding discharges from control devices, to less than 20 percent opacity except for either three minutes in any consecutive 60 minute period of time or on a three minute moving average. The commenter requested clarification of whether the three minutes are consecutive or additive, and what is meant by "a three minute moving average."

EPA Response: (1) The three minutes in any consecutive 60 minute period are the result of additive fifteen second readings, therefore if any 60 minute sampling period reveals a total of 12 or more fifteen second periods during which times an opacity of 20 percent or more is observed, the unit is considered to be in violation. (2) The "three minute moving average" means that the check for violations is made for a three minute time period which is continuously changing to include the latest fifteen second reading recorded and the eleven consecutive readings which preceded it. If the average opacity for any three minute period exceeds 20 percent then the unit is considered to be in violation. The average opacity is calculated using 15 second interval readings.

12. Comment: One commenter requested clarification of deficiency 8.c (45 FR 62163) concerning 401 KAR 61:140, Existing By-Product Coke Manufacturing Plants. The commenter requested clarification of EPA's reference to " . . . 90% of Method 9, . . .".

EPA Response: A printing error exists in the September 18, 1980 **Federal Register** at page 62169, Deficiency 8.c.; correcting the error should clarify EPA's position. The portion of Deficiency 8.c. which reads " . . . 90% of Method 9, . . .", should be " . . . 90% of Method 9's . . .". Therefore, Deficiency 8.c. should read as follows:

"c. The proposed regulation requires 85 percent capture of total particulate matter generated during pushing. If an enforceable test procedure were included with the standard so that compliance could be documented, EPA would have no objections to the proposed regulation. However, in the absence of such a test procedure, EPA would recommend an opacity standard such as, no visible emissions during pushing should equal or exceed 20 percent opacity except for 6 seconds per push (averaged over a number of pushes) as read over the collector main or 90 percent of Method 9's 15 second readings shall not equal or exceed 20 percent opacity during the pushing operation and the subsequent travel of the hot car to the quench tower."

13. Comment: One commenter took issue with EPA's reference to and reliance upon data made available as part of the rulemaking docket on the September 18, 1980, **Federal Register** notice in evaluating whether Kentucky's submittal satisfies the requirments of Part D concerning RACT for iron and steel sources. Furthermore, the commenter contends that a review of the docket revealed no evidence to support any of EPA's evaluations which are based upon the docket.

EPA Response: As explained in a notice published in the **Federal Register** on September 8, 1980 (45 FR 59198–99), which is referenced here, EPA, in its review of Part D plans for areas containing iron and steel sources, has endeavored to verify independently that the plans submitted by the states in fact include provisions which represent RACT. To that end, EPA has collected and evaluated data which reflect levels of performance achieved by various iron and steel sources applying control technology, and has made those data available for review as part of the rulemaking docket. However, EPA has *not* established categorical RACT requirements, and a State may develop its RACT requirements independently of those data; EPA will approve any submitted RACT requirement that the State shows will satisfy the requirements of the Act for RACT, based on the economic and technical circumstances of the particular sources being regulated. In addition, contrary to the general contention of the commenter, EPA believes that its discussion and analysis in the September 18, 1980 **Federal Register** notice is amply supported by the referenced data and material in the rulemaking docket.

Actions

With the exception noted below, the Administrator conditionally approves Kentucky's 1979 revisions, for total suspended particulate nonattainment areas except for Marshall County, on the condition that deficiencies noted be corrected by October 15, 1981. EPA defers action on the TSP plan revisions for Marshall County pending

clarification and supplemental material on the enforcement procedures for implementing Kentucky regulation 401 KAR 61:070. It is EPA's intent to fully approve these revisions when the Commonwealth corrects the deficiencies. If the corrections are not forthcoming by October 15, 1981, EPA will act to disapprove the related plan revisions.

EPA disapproves as part of the Kentucky SIP regulation 401 KAR 61:015 Section 8, Paragraph (2)(d), because it relaxes compliance schedules for sources which are not being made subject to stricter emission limits. However, since Kentucky's 1979 revisions, without the disppproved provision substantially complies with the requirements of Part D and may therefore be conditionally approved, Section 110(a)(2)(I) of the CAA will not apply.

The 1978 edition of 40 CFR Part 52 lists in the subpart for Kentucky the applicable deadlines for attaining ambient standards (attainment dates) required by Section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines are substituted on Kentucky's attainment date chart in 40 CFR Part 52. The earlier attainment dates under Section 110(a)(2)(A) will be referenced in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new Section 172 plan requirements.

Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under part D.
>
> (123 Cong. Rec. H 11958, daily ed. November 1, 1979)

To implement Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions even though a Section 172 plan revision with a later attainment date has been approved. However, a compliance date extension beyond a pre-existing attainment date may be granted if it will not contribute to a violation of an ambient standard or a PSD increment. (See General Preamble for Proposed Rulemaking, 44 FR 20373–74 (April 4, 1979).

In addition, sources subject to pre-existing plan requirements may be relieved of complying with such requirements if a Section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis.

This action is effective immediately. EPA finds good cause to make this conditional approval immediately effective, because the Clean Air Act restricts new construction where plans are not approved after June 30, 1979. Making the conditional approval immediately effective will terminate the restriction as soon as possible.

Under Section 307(b)(1) of the Clean Air Act, judicial review of these actions 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 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.

(Secs. 110, 172, and 301 of the Clean Air Act (42 U.S.C. 7410, 7502, and 7601))

Dated: December 15, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart S—Kentucky

1. Section 52.920 is amended by adding a subparagraph (14) to paragraph (c) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(14) 1979 revisions for Part D requirements for total suspended particulate nonattainment areas (Bell, Boyd, Jefferson, McCracken and Muhlenberg counties, that portion of Bullit County in Shepherdsville, that portion of Campbell County in Newport, that portion of Daviess County in Owensboro, those portions of Henderson County in and around Henderson, that portion of Lawrence County in Louisa, that portion of Madison County in Richmond, that portion of Perry County in Hazard, that portion of Pike County in Pikeville, and that portion of Whitley County in Corbin) submitted on June 29, 1979, by the Kentucky Department for Natural Resources and Environmental Protection.

2. Section 52.926 is revised to read as follows:

§ 52.926 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. The dates reflect the information presented in Kentucky's plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Appalachian Intrastate:							
a. Bell County	g	h	b	b	b	b	b
b. Perry County	g	h	b	b	b	b	b
c. Whitley County	g	h	b	b	b	b	b
d. Rest of AQCR	c	*c*	b	b	b	b	b
Bluegrass Intrastate:							
a. Fayette County	a	*c*	b	b	b	b	*g*
b. Madison County	g	h	b	b	b	b	b
c. Rest of AQCR	a	*c*	b	b	b	b	b
Evansville (Indiana)-Owensboro-Henderson (Kentucky) Interstate:							
a. Daviess County	g	i	g	g	b	b	b
b. Henderson County	g	i	a	e	b	b	*g*
c. Webster County	c	*c*	g	g	b	b	b
d. Rest of AQCR	c	*c*	a	e	b	b	b
Huntington (West Virginia)-Ashland (Kentucky)-Portsmouth-Ironton (Ohio) Interstate:							
a. Boyd County	g	i	g	b	b	b	*g*
b. Lawrence County	g	h	b	b	b	b	b
c. Rest of AQCR	c	*c*	b	b	b	b	b
Louisville Interstate	g	i	j	j	b	h	h
Metropolitan Cincinnati Interstate:							
a. Boone County	c	*c*	a	d	b	*d*	h
b. Campbell County	g	h	a	d	b	*d*	h
c. Kenton County	c	*c*	a	d	b	*d*	h
d. Rest of AQCR	c	*c*	a	*d*	b	*d*	c
North Central Kentucky Intrastate:							
a. Bullitt County	g	h	b	b	b	b	b
b. Rest of AQCR	a	*c*	b	b	b	b	b
Paducah (Kentucky) Cairo (Illinois) Interstate:							
a. McCracken County	g	h	g	f	b	b	b
b. Marshall County	c	g	a	f	b	b	b
c. Muhlenberg County	g	h	g	g	b	b	b
d. Rest of AQCR	c	*c*	a	f	b	b	b
South Central Kentucky Intrastate	b	b	b	b	b	b	b

See § 81.318 of this chapter to identify the specific nonattainment area.

Note.—Dates or footnotes in italics are prescribed by the Administrator because the plan did not provide a specific date or the dates provided were not acceptable. Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.926 (1979 edition).

a. Air quality levels presently below primary standards or area is unclassifiable.

b. Air quality levels presently below secondary standards or area is unclassifiable.

c. April 1975.

d. July 1975.

e. July 1977.

f. July 1978.

g. December 31, 1982.

h. December 31, 1987.

i. 18 month extension for plan submittal granted: attainment date not yet established.

j. January 1, 1985.

3. Section 52.935 is added as follows:

§ 52.935 Control strategy: Particulate matter.

(a) Part D—Conditional approval.

(1) With the exception of Regulation 401 KAR 61:015, Section 8, paragraph (2)(d), which is disapproved, the 1979 total suspended particulate revisions for Bell, Boyd, Jefferson, McCracken and Muhlenberg counties, and that portion of Bullit County in Shepherdsville, that portion of Campbell County in Newport, that portion of Daviess county in Owensboro, those portions of Henderson County in and around Henderson, that portion of Lawrence County in Louisa, that portion of Madison County in Richmond, that portion of Perry County in Hazard, that portion of Pike County in Pikeville, and that portion of Whitley County in Corbin, nonattainment areas, are approved on condition that the following be submitted by October 15, 1981:

(i) A revision to Regulation 401 KAR 50:055 Section 2(3) specifying a method for determining opacity for sources of intermittent emissions other than Method 9 of Appendix A, 40 CFR Part 60.

(ii) A revision to Regulation 401 KAR 50:055 section 2(6) which specifies that adjustment of opacity standards be restricted to stack or control device discharges.

(iii) Revisions to Regulation 401 KAR 50:055 Section 6, Alternative Emission Reduction Options to correct deficiencies as outlined in the September 18, 1980 **Federal Register**, 45 FR 62163 at page 62168, deficiency number 3.

(iv) Revisions to Regulation 401 KAR 61:005 General Provisions, Section 2(1) and 2(2) such that the regulation clearly requires a performance test as the means for demonstrating compliance.

(v) A revision to Regulation 401 KAR 61:020 Section 3, Standard for Particulate Matter, such that the regulation has a specific requirement of reasonably available control technology (RACT) applicable to sources of process fugitive emissions.

(vi) Revisions to Regulation 401 KAR 61:075; Steel Plants and Foundries Using Existing Electric Arc Furnaces, which specifies a method for determining opacity for sources of intermittent emissions other than Method 9 of Appendix A, 40 CFR Part 60, and an opacity limitation which represents a level of control equivalent to RACT.

(vii) A Revision to Regulation 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces, which specifies a method for determining opacity for sources of intermittent emissions other than Method 9 of Appendix A, 40 CFR Part 60, and an opacity or mass limitation which represents a level of control equivalent to RACT.

(viii) Revisions to Regulation 401 KAR 61:140; Existing By-Product Coke Manufacturing Plants, which specify standards and emissions limitations which represent a level of control equivalent to RACT for battery topside leaks, charging, pushing, and quenching operations, as well as appropriate test methods.

(ix) Establishment of a Regulation which will represent a level of control equivalent to RACT for blast furnace casthouses.

[FR Doc. 80-40056 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 52

[A-5-FRL 17 11-1]

Approval of Michigan Sulfur Dioxide State; Implementation Plan for Consumer Power Company's J. H. Campbell Plant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 19, 1979 (44 FR 66214), USEPA proposed approval of a revision to the Michigan State Implementation Plan (SIP). The revision in the form of a Final Order, extends from January 1, 1980 until January 1, 1985 the date by which the Consumers Power Company is required to bring sulfur dioxide (SO_2) emissions from coal-fired boilers at its J. H. Campbell Plant into compliance with SO_2 regulations in the federally approved Michigan SIP. The State of Michigan submitted an amendment to the Order on February 14, 1980, and USEPA proposed approval of the revised Final Order in a supplemental notice of proposed rulemaking on April 22, 1980 (45 FR 26983). Interested persons were invited to comment on the proposed revision and on USEPA's proposed rulemaking. One public comment was received. The purpose of this notice is to discuss the comments received and to announce USEPA's final rulemaking action to approve this revision to the Michigan SIP.

EFFECTIVE DATE: This final rulemaking becomes effective January 23, 1981.

ADDRESSES: Copies of the SIP revision, public comment on the Notice of Proposed Rulemaking (44 FR 76311), and USEPA's evaluation and response to comments are available for inspection during normal business hours at the following addresses:

United States Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Judy Kertcher, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6038.

SUPPLEMENTARY INFORMATION: On June 26, 1979, the Michigan Department of Natural Resources, Air Quality Division, submitted as a proposed revision to the Michigan SIP a Final Order issued by the Michigan Air Pollution Control Commission (Commission). The Order extends the compliance date from January 1, 1980 until January 1, 1985 for the Consumers Power Company's J. H. Campbell Plant to meet the sulfur dioxide (SO_2) emission limitations in Rule 336.49 (revised Rule 336.1401 effective January 17, 1980) of the Commission's Rules and Regulations.

On November 19, 1979 (44 FR 66214), USEPA proposed approval of the Order as a revision to the Michigan SIP. On February 14, 1980, the State of Michigan submitted an amendment to the Order. USEPA proposed approval of the Order as amended in a supplemental notice of proposed rulemaking on April 22, 1979 (45 FR 26983). Interested persons were invited to comment on the porposed revision and on USEPA's proposed rulemaking. One public interest group submitted comments. This notice discusses USEPA's review of the Order and comments received and announces USEPA's final approval of the revision to the Michigan SIP.

The Consumers Power Company's J. H. Campbell plant is located in Port Sheldon Township, Ottawa County, Michigan, approximately one kilometer east of Lake Michigan. Ottawa County, is located in Air Quality Control Region 122, which was designated as an attainment area for SO_2 in the October 5, 1978 **Federal Register** (43 FR 45993). No exceedances of the SO_2 NAAQS occurred in 1978. The air quality modeling analysis submitted by the Consumers Power Company relied upon nonreference methodology. Consequently, USEPA performed an air quality modeling anlaysis to assure that approval of the variance for J. H. Campbell will not cause or contribute to a violation of the SO_2 NAAQS or PSD increments. USEPA used CRSTER, the reference rural, single source Gaussian dispersion model, with five years of representative meteorological data (1973–1977). Based on its detailed analysis employing reference methodology, USEPA concluded that the proposed SO_2 SIP revision for J. H. Campbell will not cause or contribute to a violation of the SO_2 NAAQS or PSD increments.

Under the Order the Company must comply with the following program for control of SO2 emissions from the J. H. Campbell plant:

(1) Beginning on January 1, 1980 and continuing to January 1, 1985 fuel burned at the Campbell Plant shall not:

(a) On an annual average exceed 3.05 percent sulfur content by weight at 12,000 Btu/pound of coal.

(b) Result in sulfur dioxide emissions greater than 414 tons on any calendar day. This emission limitation is the equivalent of burning coal which averages 3.6 percent sulfur content by weight at 12,000 Btu/pound of coal and 650 megawatts net load for 24 hours.

(c) On a daily average result in emissions of sulfur dioxide greater than a rate of 6.6 pounds per million Btu heat input.

(2) After January 1, 1985, emissions of sulfur dioxide from the Campbell plant shall not exceed the levels prescribed in Tables and 3 and 4 of Rule 336.49 (Tables 41 and 42 of revised Rule 336.1401) unless an alternate date for compliance with the levels is established by the Commission.

One public interest group submitted a comment on the proposed revision.

COMMENT: Michigan Rule 336.49(b) (revised rule 336.1401(6)) does not allow a source to emit SO2 at an average rate for any calendar month greater than was emitted by that fuel burning equipment for the corresponding calendar month of the year 1970, unless otherwise authorized by the Commission. The Order does not contain provisions that waive the requirements of Michigan Rule 336.49(6) (revised Rule 336.1401(6)).

USEPA RESPONSE: Although the Order does not expressly state that it acts as a revision to Rule 336.49(6) (revised Rule 336.1401(6)), the Order does specify interim limitations which exceed the Company's 1970 emissions. Therefore, USEPA believes that this indicates the Commission's intent to remove the source from applicability of Rule 336.49(6).

USEPA's Final Determination: USEPA approves the extension from January 1, 1980 until January 1, 1985 for the Consumers Power Company's J. H. Campbell Plant to meet the SO2 emission limitations in Rule 336.49 (revised Rule 336.1401) of the federally approved Michigan SIP. The State has indicated that it is relying on continuous emission monitoring and fuel analysis to determine the Company's compliance with the Order. This is acceptable to USEPA. If an alternate date for compliance is established with the Commission, the State must submit the new Order to USEPA as a revision to the Michigan SIP.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final 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 date of publication. 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.

Note.—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 these other regulations "specialized". I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 110 of the Clean Air Act, as amended)

Note.—Incorporation by reference of the State Implementation Plan for the State of Michigan was approved by the Director of the Federal Register on July 1, 1980.

Dated: December 18, 1980.

Douglas Costle,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52 is amended as follows:

1. Section 52.1170(c) is revised by adding paragraph 30 to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

* * * * *

(30) On July 26, 1979, the State of Michigan Submitted to USEPA a revision to Rule 336.49 for the Consumers Power Company's J. H. Campbell Plant. The revision is a Final Order (No. 05–1979) extending the compliance date until January 1, 1985 for the Campbell Plant to meet the sulfur dioxide emission limitations in Rule 336.49. On February 14, 1980, the State of Michigan submitted to USEPA an amendment to Order No. 05–1979.

[FR Doc. 80-401 42 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

A-7-FRL 1711-6]

Approval and Promulgation of Implementation Plans: State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In order to satisfy the requirements of Part D of the Clean Air Act, as amended, the State of Missouri revised its State Implementation Plan (SIP) in 1979. On April 9, 1980, EPA conditionally approved certain elements of Missouri's plan (45 FR 24140). On September 5, 1980, the State submitted documentation that one of these conditions has been fulfilled. This condition involves a requirement that one of the Missouri regulations governing the emission of volatile organic compounds (VOC) be changed to reflect RACT. On October 10, 1980 a Notice of Receipt of this material was published in the Federal Register.

The purpose of this notice is to advise the public that EPA is taking final action to approve the state's submission and is incorporating it into the approved SIP. The applicable condition is being revoked. Until all conditions are met, conditional approval of the SIP will continue.

EFFECTIVE DATE: This promulgation is effective January 23, 1981.

ADDRESSES: Copies of the state submission and the EPA prepared plan evaluation document are available for inspection during normal business hours at the following locations: EPA, Air Support Branch, 324 East 11th Street, Kansas City, Missouri 64106; EPA Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460; Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65101. A copy of the state submission is also available at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at 816–374–3791 (FTS 758–3791).

SUPPLEMENTARY INFORMATION: On April 9, 1980, EPA conditionally approved certain elements of Missouri's SIP with regard to the requirements of Part D of the Clean Air Act, as amended. A detailed discussion of the action can be found in the Federal Register notice published on that date (45 FR 24140). Today's notice discusses one of the conditions promulgated by EPA.

Missouri Rule 10 CSR 10–2.260, Control of Petroleum Liquid Storage, Loading and Transfer, was conditionally approved as part of the Part D plan revision for the Kansas City ozone nonattainment area. EPA review of this regulation was based on the information contained in the Control Technique Guidelines (CTGs). The CTGs provide information on available air pollution control techniques and recommendations of what EPA calls the "presumptive norm" for reasonably available control technology (RACT). Further discussion of the RACT requirements can be found in the April 9 Federal Register notice.

In reviewing Rule 10 CSR 10–2.260, EPA noted two minor deficiencies. Section 2 of the rule requires floating roof tanks for liquids having a vapor pressure of 1.8 psia at 70 degrees Fahrenheit. The CTG recommends 1.5 psia at storage conditions. Section 3 of the Missouri rule requires controls to limit emissions of volatile organic compounds during gasoline loading at terminals to 0.5 gram per gallon of gasoline loaded. The CTG recommends 0.3 gram per gallon of gasoline loaded. The State agreed to revise the regulation to agree with the CTG recommendation. On April 9, 1980, EPA conditionally approved the rule provided that the state submits a revision to the regulation which contains limits that agree with the CTG recommendations or submits enforceable compliance orders which assure that the CTG recommended limits are met. This revision is required by February 1, 1981.

On September 5, 1980, the state submitted revisions to Rule 10 CSR 10–2.260 for the purpose of meeting the condition. The state revised the vapor pressure specification to 1.5 psia at 70° F and the limit on gasoline loading to 0.3 gram per gallon of gasoline loaded. EPA issued a notice of receipt of this submission on October 10, 1980 (45 FR 67344). Although the state changed the vapor pressure specification to 1.5 psia at 70° F instead of 1.5 psia at storage conditions, the state has provided a list of petroleum products stored in the Kansas City area which demonstrates that those products which would be governed by the CTG recommendation will also be covered by the Missouri regulation.

Based on its review of the submitted documents, EPA finds that the condition on its approval has been fully met. Therefore, EPA is incorporating the regulatory changes into the SIP and is revoking the applicable condition. Furthermore, this action serves to continue EPA's conditional approval until all conditions have been met.

In this submission Missouri also submitted changes to this rule for the purpose of complying with the additional RACT regulations which were due July 1, 1980 (for CTGs published between January 1978 and January 1979). EPA is not acting on these changes but only on the changes submitted to comply with EPA's conditional approval of Rule 10 CSR 10–2.260 promulgated on April 9, 1980. Proposed action on the additional RACT regulations will be published in the Federal Register at a later date.

EPA finds that further notice and comment on this issue are unnecessary. The corrective action was clearly identified in EPA's promulgation and the

state's submittal clearly addresses the specified criteria for approval.

Note.—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 it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under authority of Section 110 of the Clean Air Act as amended.

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart AA—Missouri

1. 40 CFR Part 52 is amended by revising § 52.1320(c)(16)(iv) and by adding a new § 52.1320(c)(23) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(16) * * * Included in the plan are the following approved regulations:

* * * * *

(iv) Rule 10 CSR 10–2.260 Control of Petroleum Liquid Storage, Loading and Transfer (Kansas City) is approved as RACT;

* * * * *

(23) Revisions to Rule 10 CSR 10–2.260 Control of Petroleum Liquid Storage, Loading and Transfer (Kansas City), submitted on September 5, 1980, amending the vapor pressure limit in Section 2(A) and amending the limit on gasoline loading in Section 3(B)(1), are approved as RACT.

§ 52.1324 [Amended]

2. Section 52.1324 is amended by revoking paragraph (c)(1)(iv). The paragraphs designated as (c)(1)(v), (c)(1)(vi), (vi)(A) and (vi)(B) are redesignated as (c)(2), (c)(3), and (3)(i) and (3)(ii) respectively.

[FR Doc. 80-40293 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-6-FRC 1703-3]

Approval and Promulgation of Implementation Plans; New Mexico Schedules of Compliance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action gives final approval to compliance schedules for sources governed by New Mexico Air Quality Particulate Control Regulations 508—POTASH, SALT OR SODIUM SULFATE PROCESSING EQUIPMENT, 509—LIME MANUFACTURING PLANTS, and 510—FUGITIVE PARTICULATE EMISSIONS FROM NON-FERROUS SMELTERS. These schedules were submitted by the Governor as revisions to the New Mexico State Implementation Plan (SIP) to fulfill one of the conditionally approved items specified in the April 10, 1980, final rulemaking on the New Mexico Plan for Nonattainment Areas (45 FR 24460). EPA is approving these compliance schedules and is continuing the conditional approval of the New Mexico Plan for Nonattainment Areas in effect.

EFFECTIVE DATE: December 24, 1980.

ADDRESSES: Copies of the above material are available for inspection during normal business hours at the following addresses:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 M Street, S.W., Washington, D.C. 20460

The Office of The Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Jerry Stubberfield, Chief, Implementation Plan Section, Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas, (214) 767–1518.

SUPPLEMENTARY INFORMATION: The Governor of New Mexico submitted compliance schedules for particulate sources located in areas designated as not attaining the NAAQS for total suspended particulates (TSP) on July 25, 1979. The New Mexico Environmental Improvement Division developed the portion of the New Mexico SIP which addresses the attainment and maintenance of the standards for particulate matter. These compliance schedules pertain to particulate sources located in Eddy, Lea, and Grant Counties. New Mexico State Regulations 508, 509, and 510 governing control of particulate matter and the TSP control strategy for Eddy, Lea, and Grant Counties were proposed for approval by EPA in a Federal Register notice of August 9, 1979 (44 FR 46895) and were given final approval on April 10, 1980 (45 FR 24460).

New Mexico State Regulation 508 establishes final compliance dates of December 31, 1982, and December 31, 1984, for the attainment of the primary and secondary standards, respectively for potash, salt, and sodium sulfate facilities. Regulation 509 establishes a final compliance date of December 31, 1980, for lime manufacturing facilities. Regulation 510 governing fugitive particulate matter from nonferrous smelters establishes a final compliance date of December 31, 1980. Additionally, Regulation 510 establishes December 31, 1983, as the date after which no nonferrous smelting facility may (1) utilize storage piles for process materials unless they are properly controlled or enclosed or (2) utilize roadways or parking lots within the facility boundaries unless they are cleaned frequently or unless control of emissions is sufficient to prevent the accumulation of fugitive particulates in these areas.

EPA finds good cause exists for making this rule immediately effective. The submitted compliance schedules meet the necessary provisions for compliance schedules as outlined in 40 CFR 51.15.

Note.—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 10244.

(Sec. 110 of the Clean Air Act, as amended)

Dated: December 18, 1980.

Douglas M. Costle,

Adminstrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is proposed for revision as follows:

Subpart GG—New Mexico

1. In Section 52.1620, paragraph (c), a new paragraph (16) is added to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(16) Compliance schedules for several industries located in Eddy, Lea and Grant Counties were submitted to EPA by the Governor of New Mexico on July 25, 1979.

§ 52.1626 [Amended]

2. In Section 52.1626, a new paragraph (b) is added to read as follows:

* * * * *

(b) The compliance schedules for the sources identified below are approved as meeting the requirements of § 51.6 and § 51.15 of this chapter. All regulations cited are air pollution control regulations of the State.

New Mexico

Source	Location	Regulation involved	Effective date	Final compliance date
Eddy County				
AMAX Chemical Corp	Carlsbad	508	Immediately	11/1/80
DUVAL Corp	Carlsbad	508	Immediately	12/31/82
Int'l Minerals and Chem. Corp	Carlsbad	508	Immediately	12/31/84
Kerr-McGee Chem. Corp	Carlsbad	508	Immediately	9/1/81
Mississippi Chemical	Carlsbad	508	Immediately	9/15/81
National Potash Co	Carlsbad	508	Immediately	12/31/81
Potash Co. of America	Carlsbad	508	Immediately	12/31/82
United Salt Corp	Carlsbad	508	Immediately	12/31/81
Lea County				
Climax Chem. Co	Monument	508	Immediately	12/31/82
Grant County				
Kennecott Copper Corp	Hurley	509	Immediately	12/30/80
		510	Immediately	12/31/82

[FR Doc. 80-40164 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-10-FRL-1711-5]

Approval Promulgation of Implementation Plans; Revision to the Washington State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency today approves a revision to the Washington State Implementation Plan (SIP) dealing with Part D (Plan Requirements for Nonattainment Areas) of the Clean Air Act, as amended in 1977, (hereafter referred to as Act) (42 U.S.C. 1857 et seq.). EPA is conditionally approving the transportation control plan (TCP) of the Spokane carbon monoxide (CO) attainment strategy as a follow-up to the rulemaking of June 5, 1980 (45 FR 37821) where EPA took no final action on this portion of the Washington Part D SIP. The new source review (NSR) requirements were also conditionally approved in that action. In accordance with conditional approvals, the State of Washington is required to submit to EPA additional materials to satisfy the conditions of this action no later than March 31, 1981.

EFFECTIVE DATE: December 24, 1980.

ADDRESSES: Copies of the relative material for this revision may be examined during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408

Central Docket Section (10A-79-1), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460

Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

FOR FURTHER INFORMATION CONTACT: Richard R. Thiel, P. E., Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442-1230, FTS 399-1230.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA finds that good cause exists for making the action taken in this notice immediately effective for the following reasons: (1) implementation plan revisions are already in effect under State law and EPA approval poses no additional regulatory burden, and (2) EPA has a responsibility under the Clean Air Act to take final action on the portion of the SIP which addresses Part D regulations by July 1, 1979 or as soon thereafter as possible.

On November 9, 1979 EPA published in the **Federal Register** a Notice of Proposed Rulemaking (44 FR 65084) describing the nature of the Washington SIP revision, discussing certain provisions which, in the opinion of EPA, did not comply with the Act and requesting public comment. On June 5, 1980 (45 FR 37821) EPA published a Notice of Final Rulemaking on most portions of the SIP. However, no action was taken on the TCP portion of the Spokane CO strategy because of on-going discussions pertaining to technical deficiencies in calculation of emission reductions. These issues have been settled and EPA is today publishing conditional approval of the Spokane TCP.

II. Background

As part of the June 5, 1980 (45 FR 37821) final rulemaking, a complete description of the Federal and State actions leading up to the submittal of this SIP revision was presented. The only addition to that information is that the lead agency, the Spokane Regional Planning Conference (SRPC), held and participated in numerous public meetings between April 1979 and August 1980 dealing with the revision to the measure for "reduction of on-street parking." In September 1980, the SRPC adopted and the State submitted a revised CO TCP for inclusion in the SIP. This revision did not measurably alter the TCP for which EPA proposed action November 9, 1979 (44 FR 65084).

III. TCP Analysis and EPA Action

A. *TCP Development:* The Spokane nonattainment area is confined to a small portion of the CBD and major traffic corridors. The designated lead agency is the Spokane Regional Planning Conference (SRPC). The SRPC worked closely with the Spokane County Air Pollution Control Authority, the Washington Department of Transportation, the Federal Highway Administration and the State of Washington Department of Ecology (DOE) in developing this plan. Citizen participation was realized through the citizen advisory committee and four public hearings prior to the official submittal of the SIP to EPA in April 1979. Additional public participation to consider modifications to that plan were

held between April 1979 and September 1980, when the final Spokane strategy was submitted to EPA. Involvement of elected officials occurred at both the city and county levels through their participation in public hearings and interdepartmental and advisory committees.

B. *Emission Reduction:* The attainment analysis was conducted using an EPA approved model and predicts attainment of the 8-hour standard by 1982 through implementation of reasonably available control measures, without I/M. The total emissions reduction required to achieve the standard is 57 percent. EPA felt that the initial emission reductions projected to result from the control strategy discussed below (approximately 59–68 percent by 1983) were excessive and that the air quality analysis, upon which this prediction was based, was technically inadequate. The SRPC has revised the technical analysis to correct these deficiencies. The reanalysis indicates that a reduction of only 44 percent is required. Using the same transportation control measures, an emission reduction of 44–46 percent will be achieved.

C. *Transportation Control Plan:* Carbon monoxide, primarily a transportation-related pollutant, will be controlled by the transportation measures outlined below. In order to reduce emissions from mobile sources, two different approaches can be taken. The first approach is to reduce vehicle usage (e.g., miles traveled). The second approach is to reduce the emissions from individual vehicles (e.g., inspection and maintenance).

Measures which have been implemented or are scheduled to be implemented include the following:

Measure	Implementation date
(1) Transit-Marketing Program	(1)
(2) Bus Ridership Incentive Program	9/80
(3) Increased Transit Service During Peak Periods–Bus acquisition	2/80
(4) Reduction of On-Street Parking (6:30 a.m.–9:00 a.m. and 3:30 p.m.–7:00 p.m., except Sunday)	9/80
(5) Ordinance to Prohibit Excessive Vehicle Idling	[2] 2/80
(6) Loading Zone Permit System	[2] 3/80
(7) Off Street Parking Program (3 elements)	10/80
(8) Employer Programs to Increase Use of Multi Occupancy Vehicles	3/80
(9) Staggered Work Hours	3/80
(10) Computer Synchronization of Traffic Signals	8/80
(11) Traffic Flow Improvements	1980–81
(12) Fleet Vehicle Controls	[2] 8/80

[1] On going.
[2] Date of presentation of ordinance to City Council.

The City has also established a position for a person to assist and ensure implementation of the transportation control plan. The position was filled during March, 1980.

It is EPA's judgment that attainment of the CO standard by December 31, 1982 is contingent upon *aggressive* implementation of all measures described in the TCP. In particular, although the measure for expanding the transit program is designed to achieve 30 percent of the required reduction, the current operating budget contains no allowance for expansion in transit service, even for the existing system. It is critical that the operating funds be secured in time for implementing the expanded transit service on schedule.

(D) *Deficiencies/Comments/EPA Action:* The Spokane CO TCP addresses most of the items contained in the EPA guidance. However, there were certain deficiencies in the proposed plan that require correction. Accordingly, EPA proposed approval of the Spokane CO TCP on November 9, 1979 with the following conditions:

1. *Deficiencies:* (a) An air quality reanalysis must be completed by December 15, 1979. Major portions of the reanalysis include the inventory of emissions related to parking, emission reduction credits and a schedule for an inspection and maintenance program, if the reanalysis shows attainment beyond 1982.

(b) The plan must include evidence of adoption by public hearing including notice and summary of comments and disposition of comments. Evidence of an A–95 Clearinghouse Review is also required.

(c) The plan must include a commitment to fund projects for the purpose of expanding and improving public transit, including increased operating revenue.

(2) *State Response:* (a) The air quality reanalysis was submitted by the deadline and all technical deficiencies were corrected. The State submitted the corrected plan to EPA on September 10, 1980.

(b) Information verifying the public hearing process and Clearinghouse Review procedure was submitted.

(c) This condition as written was necessary if an extension of the attainment date was required as a result of the December 15, 1979 reanalysis. An extention was not necessary. However, the revised TCP includes a measure to "increase transit service during peak hours."

This requires expansion of the transit system and an increase in the operating budget. At present the measure commits to obtaining funding for new buses from the Urban Mass Transit Authority by February 1980. This has been accomplished. However, the measure does not commit to a date by which the operating budget will be increased to accommodate the system expansion. EPA understands that a sales tax increase measure will be voted on by the public in March 1981 to provide for increased operating revenue for the transit system. In light of this proposed action, EPA will condition the approval of the TCP based on submission by March 31, 1981 of a detailed schedule for implementation of increased transit service as expeditiously as practicable.

(iii) *Public Comment:* None.

(iv) *EPA Action:* (a) *Approval.*

(b) *Approval.*

(c) *Conditional Approval:* Submission by March 31, 1981 of a detailed schedule for implementation of increased transit service as expeditiously as practicable will correct the deficiency.

Failure to satisfy these conditions and make reasonable efforts to implement the TCM's on a timely basis could subject Spokane to funding limitations under Section 176 and 316 of the Act and growth limitations under Section 110.

IV. Additional SIP Requirements

EPA is taking final action to conditionally approve one element of Washington's plan, the Spokane CO TCP. A discussion of conditional approval and its practical effect appears in a supplement to the General Preamble, 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53716 (September 17, 1979), and 44 FR 67182 (November 23, 1979). This conditional approval requires the State to submit information by March 31, 1981.

There will be no extension of the conditional approval deadline which is being promulgated today. EPA will follow the procedures described below when determining whether the State has satisfied the conditions.

1. If the State submits the required additional documentation according to schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the conditions are fully satisfied. After review is complete, a **Federal Register** notice will be published either approving or disapproving the State's action. If the action is disapproved, the funding limitations under Sections 176 and 316 and growth sanctions under Section 110 of the Act may be imposed.

3. If the State fails to timely submit the required materials needed to meet a condition, EPA will publish a **Federal**

Register notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and funding limitations under Section 176 and 316 may be imposed. Section 110(a)(2)(I) restrictions on growth will be imposed or continue to be in effect.

If funding limitations are necessary, procedures for applying them would be consistent with those published in the Federal Register on April 10, 1980 (45 FR 24692). These procedures will not be discussed in detail here.

Section 316 of the Act also allows the Administrator of the EPA to withhold, condition or restrict grants for the construction of sewage treatment works in nonattainment areas where the State is not making reasonable further progress towards attainment of all national ambient air quality standards (NAAQS).

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Under Section 307(b)(1) of the Clean Air Act, judicial review of EPA's final action conditionally approving the transportation control plan portion of the Spokane CO nonattainment strategy 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 EPA to enforce these requirements.

(Sec. 110(a) and 172 of the Clean Air Act as amended (42 U.S.C. 7410(a) and 7502))

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Washington was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is hereby amended as follows:

Subpart WW—Washington

1. In Section 52.2470 paragraph (c)(23) is added as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(23) On September 10, 1980 the Governor submitted a revised transportation control plan for the Spokane carbon monoxide nonattainment area calling for attainment by December 31, 1982.

2. In Section 52.2487 paragraph (a)(2) is added as follows:

§ 52.2487 Control strategy: Carbon Monoxide.

* * * * *

(a) * * *

(2) The Spokane transportation control plan portion of the carbon monoxide control strategy is approved provided the State submits information to satisfy the following condition by March 31, 1981.

(i) Submission of a detailed plan to implement expanded transit service as expeditiously as practicable.

[FR Doc. 80-40165 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 57

[FRL 1691-7]

Primary Nonferrous Smelter Orders; Response to Petitions for Reconsideration; Technical Corrections

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Partial grant and partial denial of petition for reconsideration; technical corrections.

SUMMARY: On June 24, 1980, EPA promulgated regulations that established the minimum required contents of initial primary nonferrous smelter orders (NSOs) issued under section 119 of the Clean Air Act (Act), and the criteria and procedures EPA will use in issuing NSOs and in evaluating NSOs issued by States.

This action is the Administrator's response to several petitions for reconsideration. The Administrator has denied certain points and, in response to other points, made final technical corrections to the instructions for, and economic forecasts to be used with Appendix A of the NSO regulations. The intended effect of these technical corrections concerning Appendix A would (1) make the deflator for production costs consistent with the deflator for copper prices; (2) adjust certain cost of capital figures to reflect recent high inflation rates; (3) adjust the instructions for calculating terminal value to reflect the change in the cost of capital figures; and (4) delete the instruction that in calculating terminal value the NSO applicant must capitalize net income for 1986 *plus* the after tax interest expense on long-term debt.

Elsewhere in today's Federal Register the Administrator has proposed certain amendments to the NSO regulations in response to petitions for reconsideration.

DATES: To the extent the Administrator has not granted the petitions, the action announced in this notice is effective December 24, 1980.

ADDRESSES: Docket Number DSSE-78-1 contains all supporting materials used by EPA in evaluating the petition. The docket is open for public inspection and copying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Main Lobby, Gallery I, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David Rochlin, Division of Stationary Source Enforcement (EN-341), 401 M Street, SW., Washington, D.C. 20460, telephone 202-755-2542.

SUPPLEMENTARY INFORMATION:

I. Criteria for Review of the Petitions for Reconsideration

Arizona stated that its petition for reconsideration was filed under section 307(b)(1) of the Act, 42 U.S.C. 1857h-5(b)(1), as described in *Oljato Chapter of the Navajo Tribe* v. *Train*, 515 F.2d 654 (D.C. Cir. 1975). Congress, however, amended section 307 in 1977 and expressly set out in section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B) the procedure and criteria for the Administrator to use in evaluating a petition for reconsideration such as this one, as ASARCO/Magma recognized.[1] Accordingly, the Administrator has reviewed both petitions under section 307(d)(7)(B) which EPA believes is the exclusive basis for such review.

Section 307(d)(7)(B), which to a large degree codified *Oljato*, is narrow in time and scope. It provides that any new material must first be submitted to EPA to determine whether further proceedings are warranted before any judicial review is available. Specifically, section 307(d)(7)(B) provides that the Administrator shall convene a proceeding to reconsider the rule in question if a person raising an objection can demonstrate that (1) it was impracticable to raise such objection

[1] Congress, under section 307(d)(1)(G), explicitly made any petition for reconsideration of the Administrator's final NSO rules subject to section 307(d)(7)(B).

during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (which EPA concludes means within the 60-day time period provided for judicial review under section 307(b)(1), 42 U.S.C. 7607(b)(1)); and (2) such objection is one of central relevance to the outcome of the rule. If the Administrator refuses to initiate such a proceeding, the moving party may seek judicial review of that decision under section 307(b) of the Act, 42 U.S.C. 7607(b).

EPA interprets the phrase "of central relevance to the outcome of the rule" to mean that the petitioner must demonstrate that its objection, if assumed to be true, would cause EPA seriously to consider changing the rule previously promulgated. This is clear from the statutory language itself that speaks specifically of objections centrally relevant to the "outcome of the rule." This is stricter than section 307(d)(4)(B) which speaks of documents of "central relevance to the rulemaking," for purposes of including documents in the administrative record. It is more akin, in both wording and purpose, to section 307(d)(8) which provides that a judicial remand on procedural grounds should be based only on an error so serious and related to matters of such "central relevance to the rule that there is substantial likelihood that the rule would have been significantly changed" if such an error had been made.

II. Discussion

The following discussion sets out the Administrator's response to the petitions and the reasons for it. EPA has also added in response to the petitions item number VI–B–1 to the public docket. This item explains certain of the reasons for the Administrator's response in greater detail.

A. Arizona Petition

In its petition, Arizona argued that the NSO regulations should (1) specify whether compliance with the 24-hour sulfur dioxide national ambient air quality standard (NAAQS) is determined by using a running or discrete average; (2) excuse excess emissions during acid plant start-up after scheduled maintenance; (3) address whether use of the required consent to liability is constitutional in a criminal proceeding; (4) reflect the reality that a supplementary control system (SCS) can reliably prevent NAAQS violations caused by a smelter's fugitive emissions, as well as by its stack emissions; and (5) delete the requirement that a state cannot issue a waiver of the interim requirement for the use of constant controls absent the Administrator's recommendation that such a waiver be granted. This notice discusses these points seriatim.

1. *Specification of 24-hour running average.*

Arizona repeated in its petition the comment it submitted on the proposed NSO regulations that EPA should specify whether the 24-hour NAAQS for sulfur dioxide was a discrete or running (non-overlapping) average. Arizona did not argue for either a discrete or running average, but contended only that specification of one or the other was necessary in order to comply with the notice and comment provisions for rulemaking under the Administrative Procedure Act, 5 U.S.C. 553.[2] EPA specifically responded to this comment when it promulgated the NSO regulations:

> This rulemaking does not affect the reporting of ambient monitoring data for purposes of determining whether National Ambient Air Quality Standards are being met. Compliance with the 3-hour and 24-hour standards for SO_2 is determined by examining running 3-hour and 24-hour averages starting at each clock-hour. If any two non-overlapping three-hour periods in any year exceed the three-hour secondary standard (1300 $\mu g/m^3$), the standard has been violated. If any two non-overlapping 24-hour periods in any year exceed the 24-hour primary standard (365 mg/m^3), that standard has been violated. Guidelines for the Interpretation of Air Quality Standards, EPA, OAQPS No. 1.2–008, February, 1977. See also 40 CFR Part 58, "Ambient Air Quality Surveillance," Appendix F. Paragraph 2.1.2., 44 FR 27558, 27597 (May 10, 1979).

Under section 307(d)(7)(B) it was not impracticable for Arizona to raise this objection during the comment period. This conclusion is obvious; it could not have been impracticable because it was done. Since in its final rule EPA responded fully to the objection, it cannot be viewed as centrally relevant to the outcome of the rule, either. Accordingly, EPA must deny the petition on this point.

For the sake of clarification, however, EPA notes that it has specified that where continuous monitors are used, the 24-hour average is running, not discrete. *Appendix F to 40 CFR Part 58 requires that compliance with the NAAQS for sulfur dioxide be computed on a non-overlapping average anywhere a continuous monitor is in operation.* EPA proposed the use of non-overlapping values in Appendix F to insure that *all* 24-hour average concentrations of sulfur dioxide that will actually be breathed by people will also be reported. 43 FR 34892 (August 7, 1978). This was because the 24-hour NAAQS for sulfur dioxide was based on health studies that showed that continuous 24-hour exposures to sulfur dioxide are harmful to human health, without regard to the time of day at which the 24-hour period begins.

2. *Excess emissions after scheduled maintenance.*

In response to comments on the proposed NSO regulations, EPA provided in § 57.304(e) of the final regulations that an NSO may excuse certain excess emissions which occur during acid plant start-up after a prolonged SCS curtailment, provided certain measures are specified to minimize such emissions. In the preamble to the final regulations, the Administrator recognized that if an acid plant has not received gas for some time, it can cool so much that a warm-up period is required before efficient gas treatment is again feasible. 45 FR 52530.

Arizona argued in its petition that EPA's failure also to excuse excess emissions during start-up of an acid plant following shutdowns due to scheduled maintenance (in addition to SCS-compelled shutdowns) is bad policy because it would discourage adequate acid plant maintenance. In addition, the State said, the reasons for applying the "exemption" to start-ups following shutdowns due to scheduled maintenance are compelling because such shutdowns may often last much longer than SCS-compelled shutdowns, and this diminishes the effectiveness of practices to prevent cooling of the acid plant.

EPA agrees with this point in Arizona's petition and is today granting Arizona's petition on this point by proposing elsewhere in today's **Federal Register** to treat alike excess emissions during acid plant start-up following shutdowns compelled either by SCS-curtailments or by scheduled maintenance.

3. *Use of consent to liability form in criminal proceeding.*

Section 57.403 of EPA's final NSO regulations requires that an NSO contain written consent by the applicant that, in any judicial or administrative proceeding to enforce the NSO, it would not contest liability for a NAAQS violation in its designated liability area. The applicant would not waive its right to show that the determination of violation was "clearly wrong," or that it was done "knowingly."

Without recommending one position or another, Arizona stated in its petition that EPA should discuss whether it (or Congress) could, consistent with the

[2] EPA rejects any implicit suggestion in the petition that the requirements of 40 CFR 58, Appendix F pertain only to the reporting of data and may not be used to determine compliance with the sulfur dioxide standard.

Constitution, require the use of a consent statement in a criminal prosecution. The State discussed the constitutional issues it perceived, and particularly questioned whether, in effect, use of the consent form would create an unconstitutional, irrebuttable presumption that the smelter operator caused any violation that occurred in its designated liability area.

As the Administrator stated in the preamble to the proposed and final regulations, both EPA and Congress have recognized that SCS can be a reliable and enforceable means of preventing NAAQS violations only if the smelter operator is clearly responsible for all violations of ambient standards in the areas affected by the smelter's emissions. EPA implemented this belief in its pre-1977 smelter policy, largely codified by Congress, by requiring a smelter operator to assume liability for violations in the smelter's designated liability area. Nothing in that policy or Congress' adoption of it, however, required that the consent to liability be extended to criminal, as well as civil, proceedings. After reconsideration, EPA feels that the purpose of the consent to liability would not be undermined by restricting its application to civil proceedings. Therefore, without necessarily agreeing with Arizona's characterization of the constitutional issues that would arise under § 57.403 as promulgated, EPA is today proposing elsewhere in today's **Federal Register** to amend that section to restrict to civil proceedings the application of the consent to liability requirement. Under this proposal, violation of the NAAQS in a smelter's designated liability area still "would justify enforcement action to penalize the violation and prevent its future occurrence." *See* H. Rep. No. 95–294, 95th Cong., 1st Sess. 62 (1977).

Since the petition asked only that EPA consider the issues raised, EPA deems the foregoing discussion and proposed amendment to constitute a grant of the petition on this point.

4. *SCS control of NAAQS violations caused by fugitive emissions.*

Arizona made essentially two points regarding SCS and fugitive emissions. The first was that § 57.503 of the final NSO regulations somehow ignores or negates the asserted reality that an SCS can prevent violations of the sulfur dioxide NAAQS caused by fugitive, as well as stack, emissions, and that no "additional" SCS is needed to control fugitive emissions that threaten the standards.

Arizona's comments read more into § 57.503 than was intended. That section does not contemplate that an additional SCS will in every case be necessary, or that its use would necessarily "interfere" with the successful implementation of stack emission curtailment procedures. It simply deals with the possibility that a given smelter may be operating an SCS that is not currently designed to deal with fugitive emissions, and with the possibility that under some circumstances the operational procedures most effective for reducing fugitive emissions might be inconsistent to some degree with the SCS operational procedures best suited to dealing with the effects of stack emissions.

Since the petition did not request any particular action, and since there seems to be no necessary inconsistency between the State's position and the regulatory language, EPA believes the foregoing clarification removes the need for EPA formally to grant or deny the petition on this point.

Arizona's second main argument on this topic is that the exemption from liability in § 57.402(c)(3)(iii) of the regulations for NAAQS violations caused by a smelter's fugitive emissions is too broad. The state contended that a well-designed SCS should prevent violations caused by fugitive emissions in every case except where it is necessary, for the purposes of the fugitive emission evaluation required by § 57.502, to disregard normal curtailment procedures.

Section 57.402(c)(3)(iii), however, explicitly states that the exemption for violations caused by a smelter's own fugitive emissions is subject to the provisions of § 57.703(a). Section 57.703(a) requires operation of any existing SCS and the assumption of liability at all monitoring sites. Thus a smelter that was already operating an SCS to prevent violations caused by its fugitive emissions would not be exempt under § 57.402(c)(3)(iii).

Since, again, there appears to be no necessary conflict between the State's position and the regulatory language, EPA believes the foregoing clarification responds sufficiently to the petition and that there is no need formally to grant or deny the petition on this point.

5. *State ability to issue an interim constant control waiver absent prior EPA approval.*

Section 57.816 of the regulations precludes a State from granting a waiver of the interim requirement for the use of constrant controls absent a positive recommendation by the Administrator. The State contended that this conflicts with section 119(d)(2) of the Act which, although it requires the State to take the Administrator's recommendation into account, in no way binds the State to accept that recommendation.

EPA is today making a technical correction to § 57.816 to conform it exactly to the statutory language. This change is consistent with EPA's original intent, which was to implement the statute's obvious meaning that a waiver is to be granted by a State only if the imposition of the interim control requirement would necessitate closure of the smelter, a finding to be made by the Administrator. While EPA does not now foresee any situation in which the State could, consistent with the statute, grant a waiver of constant controls if the Administrator did not find that such controls would necessitate closure unless the State established that the Administrator erroneously applied the requirements of the regulations, the resolution of that question must await its occurrence in a concrete factual situation.

B. ASARCO/Magma Petition

In the preamble to the final NSO regulations, EPA noted that a portion of certain forecasts of economic factors for use in analyses required by Appendix A of the regulations did not become available and consequently was not placed in the docket until shortly before the promulgation of these rules. 45 FR 42522, n. 22a. The Administrator stated that because this provided only a short opportunity for comment before the rules' promulgation, he would consider any objection to this material submitted in a petition for reconsideration by August 25, 1980, to be based on grounds "arising after the period for public comment" within the meaning of section 307(d)(7)(B). Thus the following response to ASARCO/Magma's petition for reconsideration of the forecasts focuses solely on whether the objections are "of central relevance to the outcome of the rule." [3]

1. *Copper price forecasts.*

a. Index to convert nominal copper prices to real prices. The ASARCO/Magma petition asserts that Charles River Associates' (CRA's) 1980 report used the aggregate producer price index for all commodities to convert nominal copper prices into real prices. They argue that this index used in the 1980 report is different from the one CRA used in the 1978 report. The companies state that CRA should have used in 1980 the same "reasonable" index—the producer price index for durable manufacturing—that it did in the 1978 report.

In fact, the 1980 CRA report, like the 1978 report, used the same "reasonable"

[3] EPA has placed in the docket, DSSE–78–1, a more detailed response to ASARCO/Magma's technical objections to the forecasts.

index for durable manufacturers to convert nominal copper prices into real prices. *See* 1980 report, volume II, pp. 2A–23 and 2B–6.[4] Thus this comment is not of central relevance to the rule's outcome.

In the course of EPA's review of this petition, however, it was brought to EPA's attention that CRA had used an estimate of the 1979 value for this deflator. EPA recognizes tht the actual value was available by the completion of the CRA work.

It was also brought to EPA's attention that some of the equations in CRA's model were estimated before revised 1978 data became available. However, it is the revised data that was used in the forecast simulations and printed in the CRA report. This may have confused people trying to duplicate CRA's results. CRA has re-estimated the equations to take the revised 1978 data into account, making the equations consistent with the data printed in the appendices.

The net effect of these two corrections is to lower the average price by about five cents a pound. The forecasts of the CRA model appear as follows when these corrections are made:

Copper Price Forecasts

[1980 Dollars, Cents per Pound]

	1980	1981	1982	1983	1984	1985	1986
Previous....	89.4	81.9	103.4	110.2	120.0	126.4	118.7
Corrected..	84.1	79.9	101.2	105.2	112.8	119.2	114.2

Copper Price Forecasts

[Current Dollars, Cents per Pound]

	1980	1981	1982	1983	1984	1985	1986
Previous....	89.4	93.8	134.0	157.1	186.1	211.8	214.7
Corrected..	84.1	91.6	131.1	150.0	174.0	199.7	206.6

These changes do not alter the merits of Asarco/Magma's petition or EPA's response.

b. Assumed growth scenario for calculating copper prices. The Asarco/Magma petition also asserts that the 1980 forecasts used a more optimistic ("rapid growth") assumption for predicting copper prices than the conservative "moderate growth" scenario the 1978 report used. The companies base their assertion largely on the conclusion of its consultant, Citibank, that the 1980 forecasts are "probably statistically indistinguishable" from the rapid growth scenario forecasts developed, but not used, in the 1978 CRA report. These assertions are not true, and are not of central merit to the outcome of the rule. CRA in its 1980 report continued to use a conservative growth scenario. The alleged similarity Citibank finds between the 1980 forecasts and the "rapid growth" scenario copper forecasts in 1978 results from Citibank's failure to apply consistent deflators in comparing the 1980 and 1978 forecasts. Properly compared, the 1980 scenario yields copper prices much closer to the 1978 moderate growth scenario than to the 1978 rapid growth scenario.[5]

The CRA model assumes that copper prices depend in part on the worldwide demand for copper, which in turn depends partly on the level of economic growth. In the 1978 report CRA generated two sets of forecasts out of awareness of the potential problem of generating overly optimistic forecasts. The "rapid growth" forecast was based on a consensus of macroeconomic forecasts which existed at that time. EPA and CRA viewed those forecasts as overly optimistic since they projected rates of economic growth that were significantly higher than the economy had experienced during the previous decade.

Consequently, a "moderate growth" scenario was run based on CRA projections of macroeconomic growth which were more consistent with recent economic experience. Although the "moderate growth" scenario appeared reasonable due to its consistency with the economic performance of the last decade, it would have been considered conservative relative to the consensus of macroeconomic forecasts.

In the 1980 CRA forecast only one scenario is used and it is based on a consensus of macroeconomic forecasts. However, this does not mean that CRA used a "rapid growth" or overly optimistic scenario. The consensus macroeconomic forecasts used in the 1980 CRA report assumed growth rates far more consistent with recent economic experience than those of the 1978 "rapid growth" scenario. In fact, the macroeconomic assumptions in the 1980 report are similar to the 1978 moderate growth scenario, and are far more conservative than the assumptions of the 1978 "rapid growth" scenario.[6]

Because the rates of growth in the 1980 consensus macroeconomic forecasts were so close to those of the 1978 moderate growth scenario and were consistent with recent economic experience, they clearly did not present the same danger as the 1978 rapid growth scenario of being overly optimistic. Consequently, it was reasonable to base the copper price forecasts on these macroeconomic projections and it was not necessary to develop a more pessimistic scenario.

As noted, the copper prices predicted by the 1980 report are close to those predicted under the "moderate growth," not the "rapid growth" scenario in the 1978 report. Citibank's conclusion to the contrary stems from its failure properly to reinflate the 1978 forecasts to 1980 dollars. Essentially, Citibank reinflated the 1978 forecasts to 1980 dollars using the 1978 forecast for the 1980 price index (which greatly underestimated the inflation that subsequently took place) rather than the value for the price index used in generating the 1980 forecasts with which the 1978 forecasts are being compared. Thus, Citibank's use of inconsistent deflators for comparing the forecasts yielded a comparison which reflects the failure of macroeconomists in 1978 to predict the high inflation of the last two years, rather than any similarity between the 1980 forecasts and the rapid growth scenario used in 1978.

Using the correct conversion, and the corrected price forecasts, the 1980 forecasts predict a 5.0 percent (0.7 percent per year) increase in the constant dollar price of copper over the forecast period (1979–1986) which is actually less than the increase of 18.9 percent (2.2 percent per year) predicted by the 1978 moderate scenario. Moreover, it is far below the 66.4 percent (6.6 percent per year) increase predicted by the 1978 "rapid growth" scenario.

Finally, the average price predicted by the 1980 scenario (100.4) is actually less than the average price predicted by the 1978 moderate scenario (101.2) for the years 1980–85, the interval over which the 1978 and 1980 reports overlap.

2. *Inflation assumptions.*

The Asarco/Magma petition asserts that in two instances EPA used inconsistent assumptions in the way inflation affects different items in NSO application income projections. EPA is today correcting those two inconsistencies, as discussed below.

The first instance involves inconsistent inflation indices for metals prices on the one hand, and costs of production on the other hand. The index used for inflating metals prices, the U.S. Wholesale Price Index for Durable Manufacturing, was projected on the

[4] The companies' comment probably stems from a footnote in Table S–3 of the 1980 report that erroneously indicated that the index for all goods was used.

[5] For the first two years of the forecast, the 1980 scenario projects copper prices even *less* than the 1978 moderate growth scenario.

[6] EPA has placed in the docket in response to the Asarco/Magma petition for reconsideration a memorandum explaining part of its response in greater detail. See docket item VI–B–1. In particular, this memorandum sets out tables that properly compare the 1980 and 1978 scenarios regarding economic growth.

basis of the Data Resources, Inc., March 25, 1980 Six Year Forecast. The index EPA provided for inflating production costs, the GNP Price Deflator, was taken from the Data Resources, Inc. Spring, 1980 report entitled "U.S. Long-Term Review."

EPA agrees that the two sets of indices are not entirely consistent. EPA mistakenly took the GNP price deflator and wage index from the DRI Spring, 1980 report when it should have used the GNP deflator and wage index from the March 25, Six Year Forecast. Making that adjustment, the resulting indices are:

GNP Deflators (Percent Rates of Change)

	1980	1981	1982	1983	1984	1985	1986
Previous[1]	9.6	9.8	9.2	8.4	7.9	8.1	8.5
Corrected[2]	10.1	10.9	9.8	8.8	8.1	8.3	7.7

[1] Source: Data Resources, Inc., Long-Term Review, Spring, 1980; Table 8–4, Prices, Wages, and Productivity in the Nonfarm Business Sector.
[2] Source: Data Resources, Inc., March 25, 1980 Six Year Forecast.

Manufacturing Wage Indices (Percent Rates of Change)

	1980	1981	1982	1983	1984	1985	1986
Previous[1]	8.7	9.6	9.7	9.8	9.7	9.8	10.1
Corrected[2]	8.9	10.1	10.2	10.1	9.7	10.1	10.1

[1] Source: Data Resources, Inc., U.S. Long-Term Review, Spring, 1980; Table 8–4, Prices, Wages, and Productivity.
[2] Source: Data Resources, Inc. March 25, 1980 Six-Year Forecast, Index of Hourly Earnings of Production Workers, Private Nonfarm.

These corrected indices replace those EPA provided on page 11 of "Energy Price Indices, Manufacturing Wage Indices, and Gross National Product Deflators, 1980–86," Docket No. IV–A–22.

The second instance involves Asarco/Magma's complaint that EPA failed to update the forecasts of the cost of capital provided in conjunction with its proposed regulations. Pogue, "Estimation of the Cost of Capital for Major United States Industries, 1975, Docket No. II–A–1(f) ("Pogue Report"). Although EPA's final regulations would allow an NSO applicant to use its own estimate of the cost of capital if it is in accord with accepted financial theory and fully documented,[7] the companies complain that the Pogue Report is unreasonable for the industry as a whole. In short, Asarco/Magma contend that the failure to update the 1975 Pogue Report to reflect the higher rate of inflation in recent years results in an unreasonably low cost of capital and thus an overstatement of the present value of an NSO applicant's future income stream. The companies' consultant, Citibank, states that to estimate the cost of capital an NSO applicant should be able to use the risk-free interest rate forecasted by Data Resources, Inc. as a base, and add to this rate the nonferrous industry risk premium estimated in the Pogue Report.

EPA believes that for primary copper producers, the Asarco/Magma petition documents sufficiently, according to accepted financial theory, a case for a cost of capital figure different from that in the Pogue Report. Thus EPA would accept the figures that result from the adjustment the companies urge in their petition. To summarize, those figures which are for use in discounting yearly net income are:

	Cost of Capital (Pogue Report)	Adjusted Cost of Capital
1980	14.3	18.5
1981	13.1	16.3
1982	12.4	16.7
1983	12.6	16.8
1984	13.0	16.0
1985		15.5
1986		15.5

An NSO applicant which is a primary producer[8] may use these adjusted cost of capital figures in lieu of the figures in Table 4–13 of the Pogue Report.[9]

3. *Calculation of terminal value.*

a. Methodology of capitalizing income. Asarco/Magma assert that the final regulations contain three significant changes from the proposed regulations in the methodology for capitalizing the income generated in the final forecast year. The first is that EPA has increased terminal value by assuming that inflation continues at a rate of 7 percent during the remaining life of the smelter, whereas no factor for inflation was included in the proposed regulations.

EPA made the change to correct an oversight in its proposal. In capitalizing income, it is necessary to ensure that both net income and the discount rate (cost of capital) are consistent with respect to inflation. In promulgating its final regulations, EPA sought to ensure this consistency by effectively inflating income to be received in years subsequent to 1986 by 7 percent. This is because the Pogue Report's cost of capital was a nominal cost and EPA assumed that inflation was 7 percent at the time of Pogue's Report. Alternatively, EPA could have avoided inflating net income by having applicants capitalize by means of a second, inflation-adjusted or "real" cost of capital. The net result would have been the same.

EPA has discovered, however, that it did make a mistake in calculating the terminal value factor. The factor in Appendix A of 10.6 results from assuming a cost of capital at 12 percent and a 7 percent rate of inflation. As Citibank points out, inflation at the time of the Pogue study was actually closer to 5 percent. Using a nominal cost of capital of 12 percent and an inflation assumption of 5 percent, the figure should have been 9.3. However, since EPA is allowing an adjustment in the cost of capital to reflect more recent inflation estimates, this figure too is in error. Assuming now an average cost of capital of 16.5 percent for primary copper producers, and a general rate of inflation of 9.1 percent, the new figure should be 9.2 instead of 10.6. Thus the figure "9.2" replaces "10.6" in the detailed instructions in Appendix A regarding the calculation of terminal value for copper smelters [10] (Schedule A.1 line 08),[11] and should supersede the discussion of the derivations of the terminal value factor on pages 50–53 of the Supplemental Response to Comments.

The companies' second point on the methodology of capitalizing income is that the discount rate of 12 percent assumed in capitalizing smelter income is out-of-date because it was based on the cost of capital forecasts contained in the 1975 Pogue Report. EPA has agreed to revise the cost of capital figure, as discussed above, so this is no longer an issue.

The companies' third point concerns the requirement in the final regulations that applicants calculate terminal value

[7] Appendix A, § 2.4(f), 45 FR 42553.

[8] Because the elements in the Pogue Report for calculating the cost of capital figure were different for the primary lead and zinc producing segment of the nonferrous metal industry, the appropriate cost of capital figures for that segment, using Asarco/Magma's approach, would be as follows:

	Cost of Capital (Pogue Report, Table 4–13)	Adjusted Cost of Capital
1980	12.8	17.0
1981	11.6	14.8
1982	11.0	15.2
1983	11.1	15.3
1984	11.5	14.6
1985		14.1
1986		14.1

[9] Applicants should use these discount rates cumulatively, rather than applying different discount rates for each year. For example, to discount 1986 dollars to 1980, one would calculate the following: Net present value = Net income/d, where d = 1.155 x 1.155 x 1.160 x 1.168 x 1.167 x 1.163, instead of d being equal to 1.155 [6]

[10] The corresponding figure would be 10.1 for lead and zinc smelters.

[11] 45 FR 42554 (col. 2).

by capitalizing net income for the last year of the forecast period plus the after tax interest expense on long-term debt. They argue that addition of after tax interest is unwarranted because EPA's salvage value does not measure the returns to capital and thus the discount rate does not reflect the amount of equity and debt financing and smelter used.

EPA believes it erred in instructing applicants to capitalize net income for 1986 plus after tax interest expense on long-term debt, but not for the reasons cited in the petition. EPA erred simply because net income already excludes interest on long-term debt, and thus no adjustment is necessary to avoid double-counting. If net income included a deduction necessary for interest on long-term debt, such an adjustment would be necessary. Since it does not, EPA is today changing the instructions in Appendix A, Schedule A.1, line 08 to read: "[terminal value] shall be computed by capitalizing the forecasted net income for operations in 1986 by the historical cost of capital as furnished by EPA." Also, the schedule and line reference in the instructions should be changed to Schedule C.1, line 25 rather than line 23, since line 23 is before tax income. These are technical changes.

b. Capitalizing "peak" income. Asarco/Magma argue that EPA used a single forecast year (1986) at the peak of a business cycle to calculate terminal value and thereby overstated the value of the smelter in the years following the forecast period, since those years would likely include business downturns. This argument has no merit and is not centrally relevant to the outcome of the rule.

The macroeconomic assumptions do not asume a business cycle that peaks in 1985 and then ebbs causing lower prices in 1986 and 1987. It is true that the forecasted price of copper peaks in 1985. However, the decline (in real terms) for 1986 and 1987 is caused by the significant new capacity that comes on stream in 1986 and 1987 in the CRA forecast scenario. Such capacity increases would cause the price to decline in the short run.

In the long run, the price level would depend greatly on the rate and cost at which additional capacity continued to come on stream. CRA's forecast indicates that copper consumption will grow at an average annual rate of 3.2 percent between 1979 and 1987. This rate of growth implies that copper consumption will nearly double over the 21-year period 1980–2001. Such an increase in consumption will necessitate the development of new mines.

Consequently, the price of copper will ultimately have to rise to a level at which development of new mines is profitable. Estimates of this price level vary. However, they are generally well above the 1986 forecast value of $117.3/lb. (1980 dollars), which is thus an extremely conservative price to use as the average expected price over the period from 1986–2000.

4. *Procedures.*

Finally, Asarco/Magma contend that EPA committed several procedural errors in promulgating the NSO rules. Specifically, the companies complain that EPA violated section 307(d) of the Act by (a) failing to place in the docket before proposal and promulgation the EPA economic tests it used under its pre-1977 smelter policy upon which the promulgated NSO eligibility test is based in whole or in part; (b) failing to reveal the origins of certain data underlying the forecasts; and (c) failing to explain alleged differences in the forecasts proposed and those promulgated. In a supplement to their petition EPA received on October 7, 1980, Asarco/Magma specify certain documents EPA should place in the docket and request the opportunity to cross-examine certain witnesses during such proceedings. These contentions are not of central relevance to the outcome of the rule, as discussed below.

a. Prior economic tests. Asarco/Magma argue that EPA's failure to place in the docket before proposal the financial analyses of two smelters performed by EPA under its prior smelter policy violated section 307(d)(6)(C) and the failure to do so before promulgation violated section 307(d)(3). These sections require docketing of the data on which the respective proposal and promulgation are based before the action is taken. Citing two footnotes in the preamble to the final NSO regulations, a sentence in EPA's Supplemental Response to Comments, and a memorandum in the docket, Asarco/Magma contended that a significant basis for the eligibility test EPA promulgated was its similarity to economic tests EPA used under its earlier smelter policy prior to Congress' adoption of the essential elements of that policy in enacting section 119.

The Asarco/Magma contentions misconstrue both EPA's statements and their intent. EPA neither based the final affordability test (the Net Income Test) on these two analyses nor relied on them in proposing or promulgating that test. Consequently, there was no reason to include them in the docket, and the failure to do so was not of central relevance to the outcome of the rulemaking.

As the June 24, 1980 Federal Register notice discusses in more detail, the Net Income Test was instead adopted based on EPA's interpretation of Congress' intent in enacting section 119 (1) to adopt the basic features of the Agency's existing smelter policy, and (2) to leave to the Administrator's discretion in promulgating the present NSO regulations the precise form of the affordability test, so long as it was consistent with the focus of the existing EPA policy before Congress in 1977.

Under that policy, a smelter was permitted for an interim period to use SCS to meet the NAAQS for SO_2 if installation of the additional control equipment (beyond an acid plant) necessary to meet its SIP emission limitation for SO_2 was not economically feasible for the smelter. As the June 24, 1980 notice discusses, the economic focus of this policy was articulated repeatedly using the phrase "smelter shutdown;" it did not focus, as Asarco/Magma argued in comments, on the very different notion of "profitability." The notice also points out (45 FR 42516, col. 3) that EPA felt by the time of proposal of the NSO regulations that it had failed to implement its existing policy successfully because in many cases it failed to perform detailed or uniform financial analyses of the feasibility of the additional controls. This probably delayed the installation of controls at some smelters which could afford to do so.

Contrary to the Asarco/Magma contentions, therefore, in formulating an affordability test for the NSO regulations the Administrator did not use as a basis the methods he had concluded were inadequate for determining economic feasibility accurately and uniformly. Instead, he exercised his discretion under section 119 as to how best to "take cost into account," consistent with avoiding smelter shutdowns, the basic focus of the policy before Congress. The statements cited by Asarco/Magma were not intended to suggest that the Net Income Test was in any way based on the two financial analyses noted there, but rather simply as illustrations of the (flawed) methods used by EPA in those instances in evaluating whether the costs of compliance were likely to prompt smelter shutdown, i.e., were economically feasible.

In the supplement to their petition, the companies noted that in a September 19, 1980 request under the Freedom of Information Act, they sought generally all notes and other information relating to the actual economic tests EPA used under its pre-1977 smelter policy.

Asarco/Magma ask that EPA place the requested documents in the rulemaking docket for public inspection and comment during the requested reconsideration proceedings. As explained above, however, the requested documents did not provide a basis for the eligibility test promulgated, and thus are not properly part of the docket.

b. Origins of certain data. Asarco/Magma contend, somewhat obliquely, that with regard to the economic forecasts EPA "failed to reveal the origin of important elements of these data, and the analysis undertaken by the agency or its contractor in selecting the data." On the contrary, however, the 1980 CRA report explains its data, methodology, and analysis adequately.

Assumptions concerning inflation, macroeconomic activity, and industry-specific variables are described on pages 4–10 of CRA's main report, and explained in detail on pages 1B–2 to 1B–14, 2B–2 to 2B–12, and 3B–1 to 3B–15. As explained in the CRA report, the source of macroeconomic activity and inflation assumptions was the consensus of forecasts available from macroeconomic forecasting services when the forecasts were being prepared. (As discussed in part B.1.b above, EPA did not reject the use of these consensus forecasts as it had in 1978 because the forecasts were consistent with recent economic experience.) Industry-specific assumptions on capacity expansions were based on information in trade journals and provided to CRA by industry members as explained on page 9 of the CRA report.

c. Differences between proposed and final forecasts. Asarco/Magma argue that EPA failed to explain why its final forecasts substituted "optimistic" copper price forecasts for the "conservative" copper price forecasts proposed. As discussed in part B.1.b above, EPA in fact did not in its final price forecasts adopt an "optimistic" projection of copper prices.

d. Request for the opportunity to cross-examine certain witnesses during proceedings for reconsideration. Asarco/Magma requested the opportunity to cross-examine during proceedings for reconsideration EPA personnel who worked on financial tests EPA used under its pre-1977 smelter policy. This opportunity is necessary, the companies argued, because EPA's support for the eligibility test promulgated was in large part based on the recollection of EPA personnel, recorded years after enactment of § 119 and without supporting documentation, that the promulgated eligibility test is similar to the closure test used under EPA's pre-1977 smelter policy.

As noted above, the companies misstate EPA's position. EPA did not base the eligibility test promulgated on the precise methods of evaluation EPA used under its pre-1977 smelter policy. *See* part II.B.4.a. Thus there is no justification for the companies' asserted need for cross-examination, and as discussed in this notice, they have failed to demonstrate that proceedings for reconsideration are appropriate.

EPA notes parenthetically that even if EPA relied on the actual economic tests under its pre-1977 smelter policy, and even if a proceeding for reconsideration were appropriate, any oral hearing would certainly not include an opportunity for cross-examination. Section 307(d)(5) states the Act's requirements for public hearings as follows, and provides no right of cross-examination:

> In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit *written* comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the *oral presentation* of data, views, or arguments, in addition to the opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an *opportunity for submission of rebuttal and supplementary information.* [Emphasis added.]

The legislative history of the 1977 Amendments, which added the section, shows that Congress believed that the adequate representation of interests of affected parties, fairness, and full discussion of the issues in section 307(d) proceedings do not require cross-examination. The Conference Committee considered the addition of the opportunity for cross-examination but deliberately rejected it, substituting instead the section 307(d)(5)(iv) requirement that the hearing record remain open for thirty days to permit the submission of rebuttal and supplementary information *See also Vermont Yankee Nuclear Power Corp. v. National Resources Defense Council,* 435 U.S. 519 (1978).

III. Miscellaneous

In reviewing these petitions the Administrator discovered two typographical errors in Appendix A that he is today correcting. Lines 03, 05, 06, 07, and 11 of the instructions accompanying schedule A.1 in Appendix A (45 FR 42554, col. 2) all request data for the years "1979 through 1985." These lines should read "1980 through 1986" to be consistent with the years for which data is requested elsewhere in Appendix A. Second, in line 18 of the instructions accompanying schedule C.1. in Appendix A (45 FR 42561, col. 2) the term "forecasted investment" should read "existing investment." The intent to allow a smelter to deduct "all remaining depreciation" was stated in the preamble to the final NSO regulations. 45 FR 42519, col. 2.

IV. Conclusion

For the reasons stated above, Arizona's petition is granted in part and denied in part. Also, EPA has today made certain technical corrections to the NSO regulations in response to certain points in the Asarco/Magma petition, and denied the petition with regard to other points. To the extent either petition is not granted, it is final agency action regarding national rules of nationwide scope and effect. Any petition for review must be filed within 60 days with the United States Court of Appeals for the District of Columbia. Section 307(b)(1), 42 U.S.C. 7607(b)(1).

(Secs. 110, 114, 119, and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7414, 7419, and 7601), and sec. 406 of Pub. L. 95–95)

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

The Administrator hereby makes technical amendments to Part 57 in Title 40 of the Code of Federal Regulations as follows:

Subpart H—Waiver of Interim Requirement for Use of Continuous Emission Reduction Technology

1. By revising § 57.816 to read as follows:

§ 57.816 Effect of Administrator's Findings.

No waiver of the interim requirement for the use of constant controls shall be granted by the Administrator or a State unless the Administrator or a State first takes into account the Administrator's report, findings, and recommendations as to whether the use of constant controls would be so costly as to necessitate permanent or prolonged temporary cessations of operation of the shelter.

Appendix A—Primary Nonferrous Smelter Order (NSO) Application [Amended]

1. By revising 40 CFR Part 57, Appendix A, schedule A.1 (published at 45 FR 42554, col. 2) to read as follows:

Constant Controls Forecast Summary—Schedule A.1

General

* * * * *

Line 03—Sustaining Capital. Enter for each year from 1980 through 1986, the amounts reported on Schedule C.2., Line 07.

* * * * *

Line 05—Adjusted Cash Flow Projections. Enter for each year from 1980 through 1986 the difference between amounts reported on Line 01 and 04.

* * * * *

Line 06—Discount Factors. Enter the discount factor for each year from 1980 through 1986 corresponding to the weighted cost of capital as furnished by EPA or estimated by the applicant pursuant to the instructions under section 2.5.

Line 07—Present Value of Future Cash Flows. Enter for each year from 1980 through 1986 the product of Line 05 times Line 06.

Line 08—Terminal Value. Enter under the total column, the estimated terminal value of the smelter. This shall be computed by capitalizing the forecasted net income (Schedule C.1, Line 25) for operations in 1986 by the historical cost of capital as furnished by EPA. Specifically, multiply net income for the last year-by-year forecast by 9.2.

* * * * *

Line 11—Present Value of Future Cash Flows. Enter the sum of amounts previously reported on Line 07 for 1980 through 1986.

Appendix A—[Amended]

2. By revising the first sentence of 40 CFR Part 57, Appendix A, Schedule C.1, line 18 (published at 45 FR 42561, col. 2) to read as follows:

Line 18—Pollution Control Facility Depreciation and Amortization. Report the estimates of depreciation and amortization charges associated with the smelter's existing investment in constant controls pollution control equipment and facilities.

* * * * *

[FR Doc. 80-40306 Filed 12-23-80; 8:45 am]
BILLING CODE 6560-33-M

40 CFR Part 60

[AD-FRL 1710-2]

Standards of Performance for New Stationary Sources; Revised Reference Methods 13A and 13B; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: When the final revisions to Appendix A Methods 13(a) and 13(b) were published in the June 20, 1980 **Federal Register** (45 FR 41852), certain inadvertent and typographical errors were made. The purpose of this action is to correct these errors.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Shigehara, Emission Measurement Branch (MD-19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: The following corrections to Appendix A should be made in the **Federal Register** document 80-18658, Friday, June 20, 1980, appearing on pages 41855, 41857, and 41858:

1. *Page 41855:* a. First column, paragraph 6.1.1.2, third line: Add a comma after "paper," as * * * "(e.g., paper, organic membrane). * * *"

b. Second column, paragraph 7.1, third line: Change "text" to "test."

c. Second column, paragraph 7.2, thirteenth line: Add "s" to "backward."

2. *Page 41857:* a. Second column, in paragraph 9.1 ninth line from top: Change the word "collected" in the definition of V_d to "as diluted." The definition of V_d should read, "Volume of distillate as diluted, ml."

b. Third column, in paragraph 9.1 footnote at bottom: Add "U.S." before "Environmental Protection Agency."

3. *Page 41858:* a. First column, in paragraph 7.2.1 sixth line from bottom: Change "termperature" to "temperature."

b. Second column, in paragraph 7.2.1 sixth line from top: Add "deionized" after "with".

c. Second column, in paragraph 7.2.1 Equation 13B-1: Change "T_t" to "V_t".

d. Third column, paragraph 9.2, fourth line: Change Fluroide" to "Fluoride."

Dated: December 16, 1980.

David G. Hawkins,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 80-39770 Filed 12-23-80; 8:45 am]
BILLING CODE 6560-26-M

40 CFR Part 123

[SW-6-FRL 1711-7]

Texas: Phase I Interim Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency

ACTION: Approval of State program.

SUMMARY: The purpose of this notice is to grant Phase I Interim Authorization to the State of Texas for its hazardous waste management program.

In the May 19, 1980, **Federal Register** (45 FR 33063), the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), to protect human health and the environment from the improper management of hazardous wastes. Included in these regulations, which become effective 6 months after promulgation, were provisions for a transitional stage in which states could be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect.

On October 6, 1980, the State of Texas applied to EPA for Phase I Interim Authorization of its hazardous waste management program. On October 16, 1980, EPA issued in the **Federal Register** (45 FR 63302) a notice of the public comment period on the State's application. All comments received during this comment period have been noted and considered, as discussed below.

The State of Texas is hereby granted interim authorization to operate the RCRA Subtitle C hazardous waste management program in accordance with section 3006(c) of RCRA and implementing regulations found in 40 CFR Part 123 Subpart F.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Beverly Foster, Solid Waste Branch. U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270 (214) 767-2645.

SUPPLEMENTARY INFORMATION: On August 4, 1980 the State of Texas submitted to me its draft application for Phase I Interim Authorization under RCRA. This draft application reflected a hazardous waste management program which was operated by the State of Texas for over 10 years before the RCRA regulations were published in the **Federal Register.** During our review of the Texas draft application, we realized that the number of problems identified in the Texas program resulted from the fact that it predated the RCRA regulatory scheme for hazardous waste management and simply represented a different approach to regulating this problem. I wish to commend the State of Texas for the enormous effort expended in its final application, which resulted in the reshaping of its program into one which is substantially equivalent to the Federal program. The Texas effort should serve as an example to all of a significant State contribution to the realization of effective National hazardous waste management.

In our comments on the Texas draft application, we identified major problems within each of the required components of a State application for

Phase I Interim Authorization. We indicated that the Program Description lacked sufficient information in the following areas:

(1) Coordination between the Texas Department of Water Resources (TDWR), the Texas Department of Health (TDH), and the Attorney General (AG) in the administration of the State's permit program, enforcement program, and rulemaking process;

(2) Implementation of a program for public participation in the enforcement process;

(3) Procedures to be followed in the management of the State's manifest system and coordination of manifest program management between TDH, TDWR, the AG, the Texas Department of Public Safety (TDPS) and any other agencies participating in the program;

(4) Demonstration of the adequacy of existing and projected resources for Phase I, Phase II, and Final Authorization for each Department following the requirements established in the "Guidance Manual for State Interim Authorization"; and

(5) Declaration of the intention of the State to include or exclude control of disposal of hazardous waste in underground injection wells in the State's application for Phase I Interim Authorization.

Our comments pointed out that the Texas regulations, enacted by TDWR and TDH to detail hazardous waste managment programs did not demonstrate substantial equivalence with the Federal program in the following areas:

(1) Interim status standards for hazardous waste treatment, storage and disposal facilities were neither self-executing against all existing facilities nor sufficiently broad in scope to meet the Federal program standards;

(2) Manifest system requirements did not adequately provide for return of undelivered shipments or for the completion of the manifest tracking cycle by placing responsibility on the facility to send a signed manifest back to the generator; and

(3) The definition of the universe of hazardous waste contained exclusions and classifications which were not "nearly identical" to that of the Federal program.

The AG's Statement did not demonstrate substantial equivalence with the Federal program of the State statutory and regulatory authority in the following areas:

(1) Jurisdiction over a nearly identical universe of hazardous wastes;

(2) Operation of the manifest system;

(3) Standards for transporters of hazardous wastes;

(4) Standards for storage, treatment and disposal facilities;

(5) Public participation in the enforcement process; and

(6) Sharing of State program information with EPA without restriction.

The Memorandum of Agreement (MOA) submitted with the Texas draft application did not meet the requirements of the Region 6 model MOA. The Texas draft MOA was deficient particularly in the areas of compliance monitoring, enforcement and sharing of information with EPA.

The Authorization Plan accompanying the Texas draft application did not meet the requirements of 40 CFR 123.125. It did not sufficiently detail the statutory and regulatory changes which the State must make to qualify for Phase II and Final Authorization. Schedules for drafting, introducing and publishing proposed legislative and regulatory changes were not included. In addition, the plan failed to include a projection of resources which would be available and a plan for obtaining them to meet the requirements for Phase II and Final Authorization.

On October 6, 1980 Texas submitted its final application for Phase I Interim Authorization. The final application evidenced attention to the details of the extensive EPA comments on the draft application. Each of the five major problem areas, identified in the comments on the draft Program Description, were resolved in the final application. Extensive information added to the State's introductory section entitled "State Program Description" set forth mechanisms and procedures for interagency coordination of activities in the areas of enforcement, compliance monitoring, permitting, rulemaking, and operation of the State manifest system. A Memorandum of Understanding among TDH, TDWR, and the AG, addressed the requirements for public participation in enforcement and provided the assurances necessary to satisfy the Federal regulation.

Clarification was provided indicating that Texas would not ask to include control of disposal of hazardous waste in underground injection wells in its Phase I Interim Authorization application. Material was included which detailed existing staff and funds as well as plans and projections for future resource needs. While Texas has complied with EPA's personnel requirements for Phase I by dedicating the positions necessary to operate its program, EPA intends, in its oversight capacity to insure that the State meets its commitments to fill vacancies and maintain a full staff.

The State's final application included amendments to the regulations of TDH and TDWR which eliminated all problems raised by EPA comments on the regulations included in the draft application. The Texas regulatory scheme is now nearly identical to the Federal program for Phase I. Consequently, there is no longer any question of the substantial equivalence of Texas' regulatory control of the universe of hazardous waste, the operations of the manifest system, and the immediate enforceability of interim status standards equivalent in scope to the Federal standards for treatment, storage and disposal facilities.

The Attorney General's Statement submitted as part of the Texas final application incorporated changes in the State's regulations, certified that these regulatory changes were duly adopted and would become effective prior to authorization and included additional clarifying material. These additions resolved all major issues concerning this component of the Texas application. New regulations coupled with clarifying comments satisfied all questions related to the authority of the State to regulate the universe of hazardous waste, manifest system, and interim status standards for hazardous waste facilities in a fashion substantially equivalent to the Federal program.

New material added to the Attorney General's Statement demonstrated Texas' compliance with Federal requirements for public participation in enforcement. Reference was made to the Memorandum of Understanding among TDH, TDWR, and the AG (described above in the Program Description discussion) for the details on how compliance would be achieved. Comments on new State regulations, which deal with the sharing of State program information with EPA, satisfied any concerns that there might be unacceptable restrictions on EPA's access to State program information.

The MOA incorporated almost all of the provisions of the Region 6 model MOA. The major problems which were identified in the comments on the draft MOA were resolved. However, certain limitations on the extent of informal enforcement proceedings before formal action would be required, were not included. While EPA would prefer that this enforcement procedure be established in the MOA, we find that the enforcement procedures set forth in the Program Description generally satisfy this requirement. However, in its oversight capacity, EPA intends to review State enforcement program requirements to determine State

compliance and the need for future revision of the MOA.

The Authorization Plan, submitted in the Texas final application, underwent substantial revision. These revisions covered details and schedules for State regulatory and legislative changes necessary for final authorization. Necessary information on resource projections and future budget submissions were also included. With the addition of these new materials no further questions remained on the sufficiency of the State's Authorization Plan.

Responsiveness Summary

On October 16, 1980, I had a notice published in the **Federal Register** inviting the public to offer comments on the Texas Application for Phase I Interim Authorization of its Hazardous Waste Management Program at a public hearing to be conducted by Region 6 on November 18, 1980. This notice also invited the public to submit written comments on the Texas application to Region 6 by November 25, 1980.

Region 6 held the public hearing on the Texas Application for Phase I authorization on the evening of November 18, 1980, in Austin, Texas. Twenty-eight presentations were made. In addition, Region 6 received sixteen written comments on the Texas application before the close of the public comment period on November 25, 1980. Three of the sixteen written comments were submitted as supplements to comments presented at the public hearing. All comments, if they complied with the time constraints of the **Federal Register** notice, whether presented at the hearing or in writing, were reviewed and considered in reaching a decision on the Texas application for Phase I Interim Authorization.

Of the forty-four public comments received by Region 6 (28 at the hearing and 16 in writing) on the Texas application, 38 commenters favored granting the State Phase I authorization, 2 commenters supported granting Phase I authorization with reservation and subject to specific conditions, 1 commenter opposed granting the State Phase I authorization, and 3 commenters neither supported nor opposed authorization. The subject matter of the comments ranged from very general to quite specific. To simplify summary of the comments and their responses, similar comments are grouped together for one response. Where one commenter addressed more than one issue, the summary and response to each issue can be found under the subject matter of the issue rather than by commenter. The summary is presented generally in the order of subjects which received the most comment first and those receiving fewer comments presented last. However, this format is adhered to loosely to permit related comments to be presented in sequence. All comments received by EPA are responded to in the following discussion.

Comment—Twenty-two commenters supported authorization of the Hazardous Waste Management Program in the State of Texas because the burden placed upon the regulated community of functioning under a dual regulatory system was clearly not the intent of RCRA. As a corollary they asserted that if authorization were denied to the State and two systems existed side-by-side, the cost of operating the two programs would be great and would undoubtedly be passed on to the consumer.

Response.—While EPA recognizes that the policy of RCRA Section 3006 favors the authorization of State programs in part to relieve a burden on the regulated community, EPA disagrees with the contention that Congress intended this to be a standard for the granting of interim authorization of a State program. If a State program cannot evidence substantial equivalence to the Federal program then, under RCRA, interim authorization cannot be granted, notwithstanding the burdens placed upon the regulated community. That is not to say, however, that eliminating the burden of a dual regulatory system should not or does not operate as an incentive for the States and EPA alike to help achieve the substantial equivalence of a State program. The incentive to operate a cost-effective national hazardous waste management program, which eliminates expensive dual operations through the participation of the States, should provide an equally strong impetus for States to meet the requirements of interim authorization.

Comment—Twenty-two commenters stated that EPA should grant the State Interim Authorization because Texas has had over ten years of experience in solid waste management. The commenters contended that Texas' long experience has resulted in an excellent record of performance in regulating the storage, transportation, and disposal of hazardous wastes. In addition, the State has provided adequate funds and has developed a highly qualified staff to operate an effective and efficient program. Several of these commenters emphasized their belief that State government rather than the Federal government is the more appropriate jurisdiction to run the hazardous waste management program because it is more sensitive to local needs and is better prepared to identify local problems.

Response—While EPA can and does note the past effectiveness of Texas in conducting an active solid waste management program since the passage of the State Solid Waste Disposal Act of 1969, it cannot use this as the primary basis for granting Phase I authorization. The primary basis for EPA's decision to authorize a State's hazardous waste program for Phase I is not past effectiveness but substantial equivalence with the Federal program. EPA had suggested, in its proposed regulations for evaluating State programs, that past performance or track record be used as a criterion for approval. That proposal was deleted from the final regulations governing the interim authorization approval process because EPA believes that future program effectiveness is more important than track record. While past performance can be considered in support of the decision to grant Phase I authorization, EPA has taken the position that the approval decision must be primarily concerned that the program perform in an effective and comprehensive manner in the future. EPA agrees that Texas has demonstrated the capacity to operate an excellent State program in hazardous waste management. However, EPA's decision to authorize Texas is based first on the substantial equivalence of the Texas program to the Federal program. Texas' past performance bolsters EPA's primary finding. EPA also agrees that if the State meets the standards for State program requirements under RCRA, the appropriate division of labor for effective national hazardous waste management, is for the State to operate the program and for EPA, through its oversight responsibilities, to supervise the State to assure compliance with the laws, regulations and policies of the Federal program.

Comment—Two commenters in the prior comment, while supporting the Texas application, expressed concern that the State program have adequate funding to support the program in the future.

Response—EPA has required a State applying for interim authorization to demonstrate the amount of funding and staff available for operation of the program. This information is a part of the State application and is a major factor to be evaluated by EPA in reaching a decision whether or not to authorize a State program. In order to apply a uniform national standard for evaluating the adequacy of State funds

committed to hazardous waste management, EPA has published in its "Guidance Manual on Interim Authorization" an estimate of the staffing requirements necessary for each State program to operate a Federal program in their State. These staffing projections were based on the size of the State and the amount of waste generated in the State. They were also divided into separate projections for Phase I programs and Phase II programs.

Under EPA's criteria for adequate staffing, it is estimated that Texas should have 62 positions to operate a Phase I program. The TDWR, which operates approximately 70% of the State program, has allocated 41 full time positions for hazardous waste management and all of those positions are currently filled. The TDH, which operates approximately 30% of the State program, has allocated 21 full time positions for their municipal hazardous waste program. Of these 21 positions allocated by TDH, 12 positions are filled and TDH is actively recruiting 9 additional staff members. While TDWR and TDH have allocated positions which equal EPA's staffing projections for the State program, only 85% of these positions are now filled. EPA would prefer that all of these positions be filled at this time, however, it is satisfied that the current recruitment efforts of TDH are such that they should be fully staffed within a short time after the program is authorized. Consequently, EPA believes that the State of Texas has demonstrated in its application that it provides funds sufficient to meet EPA's staffing requirements for Phase I program management. Nevertheless, it will be EPA's responsibility, in the exercise of its oversight role, to insure, after authorization, that Texas maintains adequate funding and staff to operate the program according to the commitments made in the application.

Comment—Twelve commenters endorsed State authorization because they found the Texas' Hazardous Waste Management Program set forth in the State's application for Phase I Interim Authorization to be substantially equivalent to the Federal Program under RCRA and the regulations published in 40 CFR 123, Subpart F.

Response—EPA agrees with this assessment of the Texas application and the standard it must apply under RCRA and 40 CFR 123 Subpart F in evaluating Phase I authorization. RCRA Section 3006(c) states "The Administrator shall, if the evidence submitted (in a State application) shows the existing State program to be substantially equivalent to the Federal program under this subtitle, grant interim authorization to the State to carry out such program in lieu of the Federal program. . . ." The intent of Congress as manifested in this section was twofold: First Congress wished to maximize State participation in the Federal hazardous waste program. Second, it wished to allow the States a period of time to develop a program which was equivalent and consistent with the Federal program. Consequently, Congress created a unique status of temporary authorization which permits a State to operate the Federal program while at the same time the State is furthering the development of that program for Final Authorization.

Nevertheless, to receive interim authorization, a State must demonstrate the "substantial equivalence" of its program to the Federal program. Once a State has demonstrated substantial equivalence "the Administrator shall grant interim authorization", applying this standard, as elaborated in 40 CFR Part 123 Subpart F. EPA has concluded that Texas has met the test of substantial equivalence and should receive Phase I Interim Authorization.

Comment—One commenter supported State authorization with one reservation because he believed the State enforcement record left something to be desired. This commenter stated that, although he found that the Texas Interim Authorization application appeared to be substantially equivalent to the Federal Phase I requirements, he was concerned that Texas lacked the commitment to adequately enforce its regulations.

Response—EPA's primary concern, in evaluating a State's application for Phase I authorization, must be that the State has the authority and capacity to carry out a program which is substantially equivalent to the Federal Program, including the authority and capacity of a State to enforce this program. EPA believes that the Program Description, MOA, and State regulations set forth in the Texas application for Phase I authorization outline a State enforcement program which meets Federal requirements for Phase I authorization. However, EPA believes, that, through its statutory oversight responsibility, it has the obligation to insure that Texas meets the terms set forth in the State's application to actively enforce its regulations.

The MOA and the RCRA grant-in-aid entered into by the State and EPA, establish the procedure for oversight and the terms of the State's accountability for compliance monitoring and enforcement. These agreements enable EPA to track the State's enforcement process and determine if the State is meeting specific commitments which it agreed to accomplish. The RCRA grant-in-aid awarded to the State agencies will function like a contract between the State and EPA. EPA agrees to pay the State if the State performs certain program activities. If through EPA's oversight and grant review it determines that the State is not meeting its commitments, funding and authorization can be withdrawn. Also, under RCRA Section 3008(a)(2) EPA, on its own motion, can commence enforcement actions for violations of RCRA in authorized States.

Comment—One commenter supported the State's attempt to seek authorization of the hazardous waste program, as long as EPA maintained an active oversight role.

Response—Notwithstanding the grant of Phase I Interim Authorization, EPA retains a substantial degree of control of the State program. (See discussion under the previous comment.)

Comment—Three commenters supported Phase I Interim Authorization for Texas but recommended that authorization be conditioned upon the State's providing additional assurances which would resolve problems of coordination between the many agencies which have jurisdiction over some part of hazardous waste management in Texas. One commenter was concerned in particular that the divided jurisdiction among Texas agencies would lead to program gaps and lack of coordination in the areas of (1) oil and gas wastes, (2) State manifest system management, and (3) regulating of municipal facilities which accepted industrial wastes.

Response—EPA agrees with this commenter that clarification of the jurisdiction of Texas State agencies and coordination among these agencies is essential to the effective administration of hazardous waste management in Texas. In its comments on the Texas draft application EPA asked for detailed analysis of the jurisdiction of relevant State agencies and a description of how coordination would be achieved among them. The Texas final application contains a section in the Program Description which sets forth the jurisdictions of these State agencies and the procedures through which they will coordinate management of the State manifest system, the issuance of State permits, the carrying out of State compliance monitoring and enforcement programs, the management of emergency response programs and other aspects of State program administration. The AG's Statement submitted with the State's final application, contains a

discussion of the jurisdiction of TDWR and The Texas Railroad Commission in the area of oil and gas wastes. EPA is satisfied that this discussion establishes that the jurisdiction of the Texas Railroad Commission covers areas which are currently excluded from its regulatory authority under 40 CFR Part 261. EPA is equally satisfied that TDWR has jurisdiction over hazardous wastes resulting from the refining of oil which is the equivalent of the jurisdiction required by 40 CFR Part 261. Consequently, EPA finds that for the purposes of Phase I Authorization, the Texas application has adequately provided for coordination between those State agencies with jurisdiction over areas currently covered by the Federal program.

Comment—One commenter recommended that EPA withhold Phase I Interim Authorization because the TDH regulations, which were included as part of the State's application, may not be valid. This commenter suggested that the TDH rules were published in the Texas Register in violation of State procedure and case law.

Response—EPA requires in 40 CFR 123.125 that the Attorney General's Statement, submitted as part of a State's application for Phase I authorization, certify that State regulations authorizing State program requirements which are substantially equivalent to the Federal program are lawfully adopted at the time the Statement is submitted and are in full force and effect at the time the program is authorized. The Attorney General of Texas has so certified the regulations in the State's application. EPA will not challenge that opinion unless it is on its face incorrect. However, if for any reason the Texas regulations are declared to be invalid, EPA can withdraw its Phase I authorization.

Comment—Four commenters expressed grave concern for the proper siting of hazardous waste management facilities in Texas.

Response—EPA agrees that the issue of proper siting for hazardous waste management facilities to prevent health hazards and environmental degradation while ensuring adequate storage, treatment, and disposal capacities is one of the key concerns in the regulatory process. EPA is devoting considerable study to this issue and is encouraging the States to begin planning to ensure proper locations for new facilities. This issue will be addressed when the hazardous waste facility permitting regulations (Phase II) become effective. Because this issue is not a part of the Federal Program requirements at this time, it was not considered in the review of the Texas application for Phase I Interim Authorization. However, it will be subject for review and comment when Texas submits its application for Phase II authorization.

Comment—Two commenters, who supported authorization, anticipated a problem because Texas did not apply for interim authorization of the Underground Injection Control (UIC) Program under RCRA. They stated that if delegation of the UIC Program under the Safe Drinking Water Act (SDWA) is delayed significantly beyond mid-1981, industry may be burdened by a dual regulatory system over underground injection wells.

Response—There will be a dual regulatory program covering hazardous waste injection wells in Texas. Existing wells are subject to EPA interim RCRA standards and also all applicable State standards. After publication of the Phase II RCRA regulations, existing and new hazardous waste injection facilities will be required to obtain RCRA permits in addition to State permits. Texas could, however, apply for EPA authorization over hazardous waste injection facilities in their RCRA Phase II interim authorization application.

Comment—Two commenters supported Phase I Interim Authorization but questioned whether the Texas program could remain consistent with the Federal program as it issues amendments and revisions to the Federal regulations.

Response—Authorized State programs are required to remain in substantial equivalence with the Federal program as it is revised by new regulations. RCRA, 40 CFR Part 123 Subpart A states that "Any approved program which requires revision because of a modification to [Part 123.13] or to 40 CFR Parts 122, 124, 260, 261, 262, 263, 264, 265, or 266 shall be so revised within one year of the date of promulgation of such regulations, unless a State must amend or enact a statute in order to make the required revision in which case such revision shall take place within two years."

Comment—Two commenters questioned authorization of Texas because of the problems which they have encountered with a chemical dump site in their area. They also were dissatisfied with the performance of TDWR and EPA in connection with resolving the problems they believe have been caused by the site.

Response—EPA recognizes the seriousness of problems which were discussed by the commenters. However, EPA cannot deny interim authorization because of past performance of the State program (See discussion above). Nevertheless, EPA believes that the facility standards which have been adopted by Texas and included in its application, as well as additional permit standards which will be published in the future by EPA, will, when followed by the facility and enforced by the State, alleviate the problems described.

Comment—Several commenters stated that the substance of the application was not available in a prepared summary and available for the public to use in preparation for the hearing. They stated that this placed them at a disadvantage and compromised their ability to comment on the State application.

Response—EPA's regulations governing procedures for approval of a State's application require notice of receipt of the application and the availability of it for inspection and copying (See 40 CFR 123.135(a)). There is no requirement to summarize the application. There are many good reasons for the absence of such a requirement. This could result in public comment, not on the State's application but to the summary. This would erode the purpose of the public comment process which is public involvement in the evaluation of the application.

The length and complexity of the Texas application would require that a summary necessarily by subjective. While many might agree that such a summary would be reasonable, undoubtedly some would not. No attempt to summarize the application would be satisfactory to all. Therefore, EPA has concluded that it is in the best interest of the public comment process not to summarize the application.

Comment—Two commenters raised questions on the adequacy of the Texas program to provide for public participation. One commenter asked how the public would be guaranteed that they would have a voice in an authorized State program. The other commenter questioned why there was no provision for public participation in the State's regulations. This commenter also recommended that notices be placed in the Texas Register of State permits issued and EPA's draft evaluation of the State program.

Response—EPA believes that RCRA, the Federal regulations and the Texas application provide for a number of important avenues for public participation in hazardous waste management. Consequently, EPA finds that the Texas program, with its new program commitments, satisfies the Federal requirements in this area.

Under RCRA, Section 7002, any person may commence a civil action on his own behalf against any goverment

instrumentality or any person who is alleged to be in violation of permits, regulations, conditions, etc. Also, there is provision to award costs of litigation (including reasonable attorney fees, civil expert witness fees) to any party if the court deems such an award is appropriate. As a result, any person, whether in an authorized or unauthorized State, may sue to enforce compliance with statutory and regulatory standards. There are two caveats; that such an action requires notice before it is commenced, and that it cannot be commenced if EPA or a State is diligently prosecuting the same action. However, if EPA has begun an action then the citizen may intervene as a matter of right.

In addition, to meet EPA requirements for Phase I authorization the Texas application includes provisions for public participation in its enforcement process. These provisions are referred to in the Attorney General's Statement and a Memorandum of Understanding (MOU) among TDWR, TDH and the AG attached to the application. The MOU contains assurances that the parties will provide for public participation in the State enforcement proces by receiving and responding to citizen complaints, not opposing permissive intervention where it is authorized by State law, and by providing notice of a proposed settlement and a 30 day public comment period on proposed settlements of judicial actions begun to enforce State program requirements. EPA oversight should help to assure that these program requirements are met.

In the Memorandum of Agreement (MOA), included in the Texas application, EPA establishes when and how it will conduct mid and end year evaluations of the State program. EPA indicates that it will receive and consider all public comments submitted on State program performance in conjunction with the mid and end year evaluations. Region 6 is currently developing procedures for notice and public involvement in the State program evaluation process. Notwithstanding the lack of formal procedures, EPA invites the public to comment on the State's performance on this and other State program requirements to assist in the exercise of its oversight responsibilities.

Dated: December 24, 1980.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 80-40151 Filed 12-23-80: 8:45 am]

BILLING CODE 6560-30-M

40 CFR Part 180

[PP 9F2197/R283; PH-FRL 1712-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the herbicide oxyfluorfen [2-chloro-13-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the raw agricultural commodities almonds, almond hulls, stone fruits [apricots, nectarines, peaches, plums (fresh prunes)], and grapes; and in or on the meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; eggs; and milk at 0.05 part per million (ppm). This regulation was requested by Rohm & Haas Co., Inc. This regulation establishes the maximum permissible levels for residues of oxyfluorfen in or on the above raw agricultural commodities.

EFFECTIVE DATE: Effective on December 24, 1980.

ADDRESS: Written objections may be submitted to the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St. SW., Washington, D.C. 20240, (202-755-1397).

SUPPLEMENTARY INFORMATION: EPA issued notices that were published in the Federal Register of September 3, 1980 (45 FR 58497 and 58500) that Rohm & Haas Co. Inc., Independence Mall, West Philadelphia, PA 19105, had filed a petition (PP 9F2197) with the EPA. This petition proposed that tolerances be established for the residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the raw agricultural commodities almonds, almond hulls, stone fruits [apricots, nectarines, peaches, plums (fresh prunes)], grapes; and in or on the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; eggs; and milk at 0.05 ppm. No comments or request for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerances included a rat oral lethal dose (LD_{50}) with an LD_{50} greater than 5.0 grams (g) per kilogram (kg) of body weight (bw); a rat cytogenetic test (negative); a host mediated assay (negative); the Ames test (negative); a rat teratology study with no terata at 1,000 mg/kg of bw (highest dose) and a no-observable-effect level (NOEL) of 100 mg/kg of bw; a three-generation rat reproduction study with a NOEL of 10 ppm; a 26-week progress report of a 2-year dog feeding study; a 90-day rat feeding study with a NOEL of 1,000 ppm; a 24-month rat feeding study (chronic toxicity/oncogenicity) with a NOEL of 40 ppm; and a 20-month mouse feeding study (chronic toxicity/oncogenicity) with a NOEL at 2 ppm.

Based on the mouse chronic feeding study with a NOEL of 2 ppm and a 100-fold safety factor the acceptable daily intake (ADI) for humans is 0.003 mg/kg of bw/day. The maximum permissible intake (MPI) is 0.1800 mg/day for a 60 kg person. No permanent tolerances have been previously established for the pesticide. The proposed tolerances have a theoretical maximal residue contribution (TMRC) of 0.0352 mg/day in a 1.5 kg diet, or 19.57 percent of the MPI.

To reinforce the present findings, the petitioner submitted a complete draft study on a 2-year dog feeding study prior to September 22, 1980 and has agreed to conduct a second teratology study with a nonrodent species.

The nature of the residue of the pesticide is adequately delineated, and an adequate analytical method (a gas chromatographic procedure using an electron capture detector) is available for enforcement purposes.

One of the solvents used in the production of technical oxyfluorfen, perchloroethylene <0.1 percent, has been shown to produce liver tumors in mice. The agency is presently assembling available information pertaining to perchloroethylene, which has wide usage outside of pesticide applications. This review will assess the health significance of perchloroethylene and is not complete at this time. The evidence on tumor production, however, does initiate a presumption against registration pursuant to 40 CFR 162.11(a)(3)(ii) for the proposed uses of oxyfluorfen. After intensive review, the agency has made a preliminary finding that potential benefits associated with the use of oxyfluorfen outweigh risks from perchloroethylene. The benefits of oxyfluorfen will be discussed in a document to be available at a later date.

An applicator risk analysis was performed to determine the risk associated with perchloroethylene resulting from applications of oxyfluorfen for all uses proposed. The maximum worst-case risk of tumor development from exposure to perchloroethylene via these uses is calculated to be one incident of tumor development in 10,000,000 applicators. The actual risk may be lower than this theoretical calculation since the actual levels of perchloroethylene in air may be lower than theoretical estimates due to air movement or other climatic factors.

The petitioner produces technical oxyfluorfen containing less than 200 ppm perchloroethylene. Based on the toxicology testing (all tested oxyfluorfen involved included perchloroethylene at less than 0.1 percent), the small risk cited above, and benefit analyses discussed in the position document, the agency has made a preliminary conclusion that the proposed registration of oxyfluorfen containing less than 200 ppm of perchloroethylene will not cause an unreasonable adverse effect on the environment.

The pesticide is considered useful for the purpose for which tolerances are sought, and it is tentatively concluded that the tolerances for oxyfluorfen residues in or on the raw agricultural commodities almonds, almond hulls, grapes, stone fruits, meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; eggs; and milk at 0.05 ppm established by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, EPA, Rm. M–3708 (A–110), 401 M St., SW., Washington, 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulations deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. If a hearing is granted, the objections must be legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective date: December 24, 1980.

(Sec. 408(e) 68 Stat. 514, (21 U.S.C. 346a(e)))

Dated: December 18, 1980.

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart C of 40 CFR Part 180 is amended by adding a new § 180.381 to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

Tolerances are established for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the following raw agricultural commodities:

Commodity:	Part per million
Almonds	0.05
Almond hulls	0.05
Grapes	0.05
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Eggs	0.05
Goat, fat	0.05
Goat, mbyp	0.05
Goat, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Milk	0.05
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05
Stone fruits [apricots, nectarines, peaches, plums, (fresh prunes)]	0.05

[FR Doc. 80-40116 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Parts 262 and 263

[SW FRL 1701-2]

Availability of Provisional EPA Identification Numbers

AGENCY: Environmental Protection Agency.

ACTION: Rule-related notice.

SUMMARY: The Environmental Protection Agency (EPA) has established a procedure for rapid issuance of EPA identification numbers to hazardous waste generators and transporters during spills and other unanticipated events. Hazardous waste generators and transporters who did not obtain EPA identification numbers through standard procedures may, during emergencies and other unusual circumstances, need to obtain them quickly if it is necessary to transport hazardous waste off-site. EPA is taking this action to provide a mechanism for EPA Regional Offices to rapidly issue identification numbers in such instances. The intended effect of this action is to streamline the transport of hazardous waste to authorized hazardous waste management facilities by reducing procedural delays.

FOR FURTHER INFORMATION CONTACT: For general information on this notice contact Rolf P. Hill or Amy Mills, Office of Solid Waste, WH–563, U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 755–9150.

For information on implementation of the procedure described in this notice, contact EPA regional office listed below:

Region I—Business hrs.: (617) 223–0240 or (617) 223–0241; Non-business hrs., emergencies only: (617) 223–7265
Region II—All hrs.: (212) 264–0503
Region III—Business hrs.: Shirley Bulkin, (215) 597–4269; Non-business hrs., emergencies only: (215) 597–9898
Region IV—All hrs.: (404) 881–4062
Region V—Business hrs.: Y. J. Kim, (312) 353–2917; Non-business hrs., emergencies only: (312) 353–2318
Region VI—All hrs.: Fred Woods (214) 767–2720
Region VII—All hrs.: (816) 374–3778
Region VIII—Business hrs.: Jim Rakers, (303) 837–6258; Non-business hrs., emergencies only: (303) 837–3880
Region IX—Business hrs.: Bill Wilson, (415) 556–1407; Nonbusiness hrs., emergencies only: (415) 556–6254
Region X—Business hrs.: (206) 442–1260

SUPPLEMENTARY INFORMATION: 40 CFR 262.12 and 263.11 of the hazardous waste management regulations promulgated pursuant to the Resource Conservation and Recovery Act (RCRA), require generators and transporters of hazardous waste to have EPA identification numbers. Each shipment of hazardous waste must be accompanied by a manifest which includes, among other information, the EPA identification numbers of the generator and each transporter. A generator or transporter who did not obtain an EPA identification number during the notification period can obtain one by applying on EPA Form 8700–12. In the event of a spill or other unanticipated incident, however, a person may need to obtain a number very quickly. For instance, if a person were to *become* a hazardous waste generator or transporter as the result of a spill of hazardous waste, and the EPA identification number and manifest waiver provision of § 263.30(b) were not applied, he would need a number before

transporting the waste off-site. In such cases, obtaining, filling out, and submitting Form 8700–12, and then waiting for Agency action on it would be too time-consuming. In order to avoid this unnecessary delay in issuing EPA identification numbers which could cause public or environmental problems, EPA has established a special procedure for rapid issuance of these numbers. EPA Regional Offices will issue provisional identification numbers to generators and transporters during emergencies or other unusual circumstances when necessary for rapid transportation of hazardous waste to an authorized hazardous waste management facility. A generator or transporter involved in such circumstances may telephone his Regional Office for a provisional identification number. The Regional Office will issue a provisional number orally or in writing, and may condition the use or duration of that number. Applicants who receive provisional numbers will be mailed a blank Form 8700–12 which must be completed and returned to EPA within ten calendar days. The Agency may subsequently issue a final EPA identification number to these applicants.

Dated: December 9, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80–40176 Filed 12–23–80 8:45 am]

BILLING CODE 6560–36–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5790

[CA–3648]

California; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This action will restore 70.77 acres of public lands to operation of the public land laws, including the mining laws. An additional 20.25 acres are privately owned and not subject to disposition under the public land laws. This order partially revokes a Water and Power Resources Service (formerly the Bureau of Reclamation) order which withdrew lands for the proposed Central Valley Project.

EFFECTIVE DATE: January 20, 1981.

FOR FURTHER INFORMATION CONTACT: Marie M. Getsman, California State Office, 916–484–4431.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751 (43 U.S.C. 1714), it is ordered as follows:

1. Departmental Order of July 7, 1936, withdrawing lands for the Central Valley Project is hereby revoked so far as it affects the following lands:

Mount Diablo Meridian

T. 33 N., R. 4 W.
Sec. 30, Lot 1 and SE¼NW¼
The area aggregates approximately 91.02 acres in Shasta County.

2. Of the lands described in paragraph 1, 20.25 acres, located in the SE¼NW¼, are privately owned and not subject to disposition under the public land laws.

3. At 10 a.m., on January 20, 1981, the public lands shall be open for operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 10 a.m., on January 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

4. The public lands will open to location under the United States mining laws at 10 a.m., on January 20, 1981. They have been open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands shall be addressed to the Bureau of Land Management, U.S. Department of the Interior, Room E–2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Guy R. Martin,

Assistant Secretary of the Interior.

December 15, 1980.

[FR Doc. 80–40294 Filed 12–23–80; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 5792

[R–1189]

California; Revocation of Air Navigation Site Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will restore 40 acres of public lands to operation of the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: January 24, 1981.

FOR FURTHER INFORMATION CONTACT: Marie M. Getsman, California State Office 916–484–4431.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The departmental order of April 7, 1933, withdrawing the following described land as Air Navigation Site No. 84, is hereby revoked:

San Bernardino Meridian

T. 7 N., R. 6 W.,
Sec. 20, S½SE¼NE¼ and S½SW¼NE¼.
Containing 40 acres in San Bernardino County.

2. At 10 a.m. on January 24, 1981, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on January 24, 1981, shall be considered simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on January 24, 1981, the lands will be open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Bureau of Land Management, Room E–2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Guy R. Martin,

Assistant Secretary of the Interior.

December 18, 1980.

[FR Doc. 80–40295 Filed 12–23–80; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 5793

[M 44591 SD]

South Dakota; Withdrawal for National Forest Electronic Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 25 acres of national forest lands from mineral location and entry and reserves them for the protection of the Terry Peak Electronic Site.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Edgar D. Stark, Montana State Office, 406–657–6291.

By virtue of the authority contained in Section 204(a) of the Federal land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from

location or entry under the mining laws (30 U.S.C. Ch. 2) for the protection of the Terry Peak Electronic Site, in aid of programs of the Department of Agriculture:

Black Hills National Forest

Black Hills Meridian

T. 4 N., R. 2 E.,
Sec. 11, A portion of the NE¼ covered by M.S. 2025, excluding Lots 1, 2, and 3.
The area described contains 25 acres in Lawrence County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands, under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,

Assistant Secretary of the Interior.

December 18, 1980.

[FR Doc. 80-40298 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5794

[OR 17820]

Oregon; Revocation of Reclamation Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes certain Secretarial orders which withdrew 3,156.56 acres of lands for reclamation purposes. The lands will not be restored to operation of the public land laws because they remain withdrawn for use as a Navy bombing range.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., 503-231-6905.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Orders of February 25, 1903 and August 22, 1904, which withdrew the following described lands for use by the Water and Power Resources Service (formerly the Bureau of Reclamation) for reclamation purposes in connection with the Columbia South Side Project are hereby revoked:

Willamette Meridian

T. 2 N., R. 25 E.,
Sec. 4, Lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, Lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
T. 3 N., R. 25 E.,
Sec. 28, NW¼ and S½;
Sec. 30, Lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32.

The areas described aggregate 3,156.56 acres in Morrow County, Oregon.

2. The lands remain withdrawn by Executive Order No. 8651 of January 23, 1941, as part of the Boardman Bombing Range; therefore, they remain segregated from operation of the public land laws generally, including the mining laws, and the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

December 18, 1980.

[FR Doc. 80-40297 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5795

[I-3379]

Idaho; Power Site Restoration No. 702; Revocation of Power Site Reserve No. 498

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Power Site Reserve affecting about 25 acres of land in Cassia County. That portion of lands involved are in private ownership.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Larry Livesay, Idaho State Office, 208-334-1735.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Energy Regulatory Commission in DA-601-Idaho, it is ordered as follows:

1. The Executive Order of July 19, 1915, creating Power Site Reserve No. 498 is hereby revoked so far as it affects the following described lands:

Boise Meridian

T. 11 S., R. 21 E.,
Sec. 21, E½SE¼
Sec. 27, N½SW¼, SE¼SW¼,
Sec. 34, W½NE¼, SE¼NE¼, N½SE¼, SE¼SE¼.

The areas described withdrew 50 feet on either side of the center line for transmission line purposes containing approximately 25 acres in Cassia County. The lands are privately owned.

December 18, 1980.

Guy R. Martin,

Assistant Secretary of the Interior.

[FR Doc. 80-40296 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5964]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood

insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since identification of the community as having flood prone areas, as shown on the Office of Federal Insurance and Hazard Mitigation's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Alabama	Jefferson	Brighton, city of	010117B	July 11, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 10, 1974 Dec. 19, 1975	Jan. 2, 1981.
Do	do	Hueytown, city of	010337A	Apr. 22, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Oct. 1, 1976	Do.
Do	do	Lipscomb, city of	010126B	July 25, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 14, 1974 Dec. 26, 1975	Do.
Do	do	Roosevelt, city of	010130B	Apr. 24, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 28, 1974 Jan. 2, 1976	Do.
Do	do	Tarrant, city of	010131B	Sept. 16, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 28, 1974 May 21, 1976 Feb. 9, 1979	Do.
Do	do	Vestavia Hills, city of	010132B	Feb. 21, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 10, 1976 Jan. 23, 1976	Do.
Do	do	Warrior, city of	010263A	May 12, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 27, 1974	Do.
Connecticut	Tolland	Mansfield, town of	090128C	Mar. 9, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Jan. 9, 1974 Oct. 29, 1976 June 21, 1977	Do.
Delaware	Kent	Frederica, town of	100009B	Apr. 2, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 17, 1974 Oct. 17, 1975	Do.
Illinois	Lake	Lake Barrington, village of	170372C	June 25, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Sept. 13, 1974 Jan. 14, 1977 June 24, 1977	Do.
Do	Cook	Oak Lawn, village of	170137C	Apr. 9, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Apr. 12, 1974 Oct. 1, 1976 July 21, 1978	Do.
Do	do	Western Springs, village of	170171C	May 9, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Mar. 15, 1974 Dec. 20, 1974 Sept. 24, 1976	Do.
Iowa	Winnebago	Forest City, city of	190283B	June 18, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 17, 1974 Mar. 19, 1976	Do.
Do	Black Hawk	Laporte, city of	190309A	Feb. 2, 1976, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 6, 1974	Do.
Maine	Cumberland	Westbrook, city of	230054B	May 30, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Apr. 12, 1974 Apr. 30, 1976	Do.
Michigan	Genessee	Argentine, township of	260392A	July 11, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Aug. 8, 1975	Do.
Do	do	Flint, city of	260076C	Aug. 28, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Feb. 15, 1974 Oct. 18, 1974 June 18, 1976	Do.
Do	Eaton	Grand Ledge, city of	260068B	July 18, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 17, 1974 July 2, 1976	Do.
Do	Kent	Plainfield, township of	260109B	Apr. 19, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Nov. 9, 1973 June 18, 1976	Do.
Do	Genessee	Vienna, township of	260665B	Mar. 29, 1976, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Feb. 24, 1978	Do.
Do	Eaton	Windsor, charter township of	260071C	May 20, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Aug. 2, 1974 Apr. 25, 1975 Jan. 2, 1976	Do.
Minnesota	Benton	Unincorporated areas	270019B	Aug. 13, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 28, 1974 Oct. 21, 1977	Do.
Do	Goodhue	Cannon Falls, city of	270141B	Apr. 5, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 28, 1974 June 18, 1976	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Do	Cottonwood	Unincorporated areas	270622B	Apr. 15, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 3, 1977	Do.
Do	Jackson	Unincorporated areas	270632B	Apr. 26, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Mar. 21, 1975 Nov. 26, 1976	Do.
Do	Hennepin	New Hope, city of	270177B	July 2, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Sept. 6, 1974 July 11, 1975	Do.
Mississippi	Rankin	Pelahatchie, town of	280146B	Sept. 3, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 7, 1974 Jan. 30, 1976	Do.
Missouri	St. Louis	Ballwin, city of	290328B	July 8, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 7, 1974 Sept. 19, 1975	Do.
Do	....do	Black Jack, city of	290336B	July 2, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Aug. 16, 1974 Sept. 19, 1975	Do.
Nebraska	Dodge	Dodge, village of	310363A	Jan. 26, 1978, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Aug. 15, 1975	Do.
New Jersey	Warren	Lopatcong, township of	340574A	July 7, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Aug. 27, 1976	Do.
Ohio	Ashtabula	Unincorporated areas	390010B	Feb. 15, 1977, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Mar. 3, 1978	Do.
Do	Medina	Brunswick, city of	390380B	Apr. 5, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Nov. 2, 1973 May 28, 1976	Do.
Do	Lake	Unincorporated areas	390771C	Oct. 22, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Jan. 6, 1978 Oct. 6, 1978	Do.
Do	Lucas	Waterville, village of	390637A	Apr. 9, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Apr. 5, 1974	Do.
Do	Greene	Xenia, city of	390197B	May 12, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 23, 1977	Do.
Oklahoma	Oklahoma	Jones City, town of	400141A	June 30, 1976, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	July 11, 1975	Do.
Pennsylvania	Luzerne	Dallas, borough of	421825B	Apr. 15, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Feb. 25, 1977	Do.
Do	Susquehanna	Great Bend, township of	421212A	Feb. 13, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Oct. 1, 1976	Do.
Do	Luzerne	Kingston, township of	420613B	Dec. 22, 1972, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	July 19, 1974 May 28, 1976	Do.
Do	Montgomery	Lower Pottsgrove, township of	421908A	Aug. 1, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Nov. 8, 1974	Do.
Do	Berks	Marion, township of	421079B	Oct. 28, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Sept. 13, 1974 June 11, 1976	Do.
Do	Lebanon	North Cornwall, township of	420576B	Mar. 16, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 7, 1973 Dec. 31, 1976	Do.
Do	Bradford	Sheshequin, township of	421102B	Apr. 22, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 28, 1974 June 25, 1976	Do.
Rhode Island	Providence	Scituate, town of	440024B	July 13, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Sept. 6, 1974 Oct. 1, 1976	Do.
South Carolina	Anderson	Unincorporated areas	450013B	July 2, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 6, 1974 Sept. 9, 1977	Do.
Texas	Hidalgo	Unincorporated areas	480334B	Oct. 6, 1972, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 23, 1978	Do.
Vermont	Franklin	Enosburg Falls, village of	500050B	July 21, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Apr. 15, 1975 Aug. 6, 1976	Do.
Wisconsin	Lacrosse	Bangor, village of	550218B	Jan. 20, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Jan. 16, 1974 July 30, 1976	Do.
Do	Dane	Black Earth, village of	550079B	Aug. 7, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 17, 1973 Jan. 23, 1976	Do.
Do	Ozaukee	Fredonia, village of	550313B	Feb. 4, 1976, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Jan. 9, 1974 June 4, 1976	Do.
Do	Winnebago	Neenah, city of	550509B	Apr. 23, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 28, 1974 June 11, 1976	Do.
Do	Racine	Rochester, village of	550352B	Mar. 21, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Jan. 9, 1974 Oct. 10, 1975	Do.
Do	....do	Waterford, village of	550354B	June 10, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 17, 1973 July 23, 1976	Do.

[1] Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 9, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39642 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[Gen. Docket 79-263; FCC 80-670]

Amendment of Freedom of Information Rules To Modify Fees for Record Searches

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: The rules adopted establish hourly fees to be levied when staff members search for documents requested under the Freedom of Information Act and requires advance payment when a search is anticipated to be lengthy. The rules also clarify the process for obtaining copies of agency documents and specify the criteria for waiving search and copying fees. The action was needed because the existing rules did not reflect the actual costs incurred by the agency.

DATES: Rules become effective January 5, 1981.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Norman B. Blumenthal, Office of General Counsel, (202) 632–6690.

Order

Adopted: November 18, 1980.

Released: December 8, 1980.

By the Commission: Commissioner Fogarty absent.

1. A Notice of Proposed Rulemaking (FCC 79–625, Mimeo 14569) in this proceeding was released on October 24, 1979 (44 FR 62305, October 30, 1979). The Notice proposed a new schedule of fees for document searches pursuant to Freedom of Information Act requests. It also made provision for advance payment in appropriate circumstances. No comments were received in response to the proposed change.

2. We proposed to correlate search fee charges to the public with the hourly labor costs for the individual employee(s) conducting the search. Currently our rules provide a flat $5 per hour rate. The proposed change was inspired, in part, by the Freedom of Information Act requirement that while search fees are assessable, they may "provide for recovery of only the direct costs of such search * * *." 5 U.S.C. 552(a)(4)(A).

3. We also proposed to require advance payment of search fees if (a) the anticipated search time exceeds 16 hours, or (b) the estimated total fee exceeds $100. The law permits the imposition of an advance payment requirement. *Rizzo* v. *Tyler*, 438 F. Supp. 895, 897–98 (S.D.N.Y. 1977). This requirement is to assure that the requestor will bear the full costs before government resources are expended.[1]

4. No comments having been submitted, such rules will be adopted, with adjustments in hourly fees (a) to a mid-level for each grade, rather than the first level, to reflect more accurately the hourly costs of employee searches (See GAO report B–167266; July 12, 1974), and (b) to reflect the rates of pay for Fiscal Year 1981. In addition, we are adopting other minor clarifying changes in our information availability rules. First, §0.465(a) is being admended to clarify the fact that the search fees established in § 0.466 apply only to record searches conducted by agency personnel and not to research charges conducted by the Commission's duplicating contractor. Under the current contract, a research fee may be assessed for the time required to research agency records for copying, regardless of whether such records are routinely available for inspection or are made available pursuant to the Freedom of Information fee waiver requests. In our FOIA annual reports to Congress, we intend to outline the extent to which waivers of research and copying fees have been granted. Finally, § 0.466(i) provides that records shall be inspected within 7 days after they are made available. This subsection also needs to appear in the sections which outline the procedures for requesting inspection of agency records, §§ 0.460 and 0.461. The amendments are set out in the attached Appendix.

5. Authority for the amendments is set out in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and in 5 U.S.C. 552.

6. Accordingly, IT IS ORDERED, effective January 15, 1981, that Part 0 of the Rules and Regulations is amended as set out in the attached Appendix.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 397)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

1. In § 0.460, paragraph (j) is added to read as follows:

§ 0.460 Requests for inspection of records which are routinely available for public inspection.

* * * * *

(j) Records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage and additional charges may be imposed for again producing them.

Act. Second, we are adding a note following § .466(c) articulating the criterion now utilized in considering requests for waiver of the search fee. We are also delegating authority to waive copying fees to the General Counsel who will apply the same criterion as used in considering search

[1] The Department of Justice, for example, has a rule provision allowing the collection of an advance deposit where the anticipated fee exceeds $25. 28 CFR 0.169(c).

2. In § 0.461, paragraph (n) is added to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(n) Records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage, and additional charges may be imposed for again producing them.

3. In § 0.465, paragraph (a) is revised and subparagraph (c)(3) is amended by adding a sentence and note at the end, to read as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) The Commission awards a contract to a commercial duplication firm to make copies of Commission records and offer them for sale to the public. The contract is awarded on the basis of lowest overall cost and best service to the public. In addition to the cost of copying, the contractor may charge a research fee for extracting the requested documents from the Commission's files. The research fee charged by the Contractor shall be that price set forth in the latest contract. The Contractor's price may vary from the search fee imposed under Section 0.446(a) of this Part when a party requests inspection of records under the Freedom of Information Act. The contractor also provides self-service coin-operated photocopy machines in Commission reference rooms. Also, persons may make photocopies with their own equipment upon arrangements with the Procurement Branch.

Note.—Currently, the Contractor is Downtown Copy Center, 1114 21st NW., Washington, D.C. 20037 (Tel. 202–452–1422). The current duplicating contract specifies a research charge of $10.00 per hour. The copying charges under the contract vary in accordance with quantity and speed of service. The duplication fee is 9 cents per page; the coin-operated copying machines are set by the Contractor at 10 cents per page (June 1980). Copies of the FCC Telephone Directory are also available from the contractor.

* * * * *

(c)(1) * * *
(2) * * *
(3) * * *

Copying charges may be waived or reduced by the General Counsel, upon a showing that waiver or reduction is in the public interest.

Note.—The criterion considered in acting on a waiver request is whether "waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. 552(a)(4)(A). The following factors are relevant in applying that criterion: the number of persons to be benefited, the significance of the benefit, the private interest of the requester which the release may further, the usefulness of the materials to be released to the general public and the likelihood that a tangible public benefit will be realized. (See Attorney General's 1974 FOI Amdts. Memorandum, at 15.)

* * * * *

4. In § 0.466, paragraph (a) is revised and a note is added, a note is added at the end of paragraph (c), paragraph (e) is redesignated as (e)(1), and paragraph (e)(2) is added, to read as follows:

§ 0.466 Search fee.

(a) Subject to the provisions of this section, an hourly fee may be charged for recovery of the direct costs of searching for records requests under § 0.460(d) or 0.461. The fee is based on the grade level of the employee(s) who makes the search, as specified in the following schedule:

Grade	Hourly fee
GS–2	$5.16
GS–3	5.81
GS–4	6.45
GS–5	7.30
GS–6	8.14
GS–7	9.05
GS–8	10.02
GS–9	11.07
GS–10	12.19
GS–11	13.39
GS–12	16.05
GS–13	19.08
GS–14	22.55
GS–15	26.33

Note.—These fees will be modified periodically to correspond with modifications in the rates of pay approved by Congress.

The above fees were computed at Step 5 of each grade (based on the comparability salary increase effective October 5, 1980) and include 9.3 percent for personnel benefits.

* * * * *

(c) * * *

Note.—The criterion considered in acting on a waiver request is whether "waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. 552(a)(4)(A). The following factors are relevant in applying that criterion: the number of persons to be benefited, the significance of the benefit, the private interest of the requester which the release may further, the usefulness of the materials to be released to the general public and the likelihood that a tangible public benefit will be realized (see Attorney General's 1974 FOI Amdts. Memorandum, at 15).

* * * * *

(e)(1) * * *

(2) If the time of search will exceed 16 hours or the fee will exceed $100 (as estimated by the custodian(s) of the records), an advance payment or deposit may be required. If the advance payment is not tendered within three business days after receipt of notice that advance payment is required, the search will be halted and the request will be denied. As the search progresses, additional payments may be required if expenses exceed the original advance payment. If the payment(s) should exceed the expense of searching for the materials, the difference will be refunded.

* * * * *

[FR Doc. 80-40278 Filed 12-23-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 0

[FCC 80-740]

Commission Organization; Additional Duty and Responsibility to the Office of the Executive Director

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission order is to establish, in the International Telecommunications Settlements Section of the Financial Management Division, an interim accounting authority identification code for U.S. entities operating mobile stations in the Maritime Mobile Service, and to implement and supervise compliance with international procedures for operations, charging and accounting of public correspondence in the Maritime Mobile Service.

EFFECTIVE DATE: December 5, 1980.

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

FOR FURTHER INFORMATION CONTACT: Wayne B. Leshe, Financial Management Division, (202) 632–6900.

SUPPLEMENTARY INFORMATION:

Adopted: December 5, 1980.

Released: December 12, 1980.

By the Commission.

1. The purpose of this Order and the rules adopted herein is to specify the duty and responsibility for international operation charging and accounting of public correspondence in the Maritime Mobile Service. New procedures have been adopted by the International Telecommunication Union (ITU) which go into force on January 1, 1981.[1] Staff

[1] CCITT Recommendation D.90/F.111—Charging Accounting and Refunds in the Maritime Mobile

Footnotes continued on next page

responsibility for implementation and execution of these procedures, on an interim basis, is assigned to the Office of the Executive Director.

2. Accordingly, it is ordered, That effective December 5, 1980 that § 0.11 of the rules is amended by adding paragraph (h) to read as follows:

§ 0.11 Functions of the Office.

* * * * *

(h) To establish in the International Telecommunications Settlements Section of the Financial Management Division, an interim accounting authority identification code for U.S. entities operating mobile stations in the Maritime Mobile Service, and to implement, execute and supervise compliance with international procedures for operations, charging and accounting of public correspondence in the Maritime Mobile Service.

3. Authority for the foregoing amendment is contained in Section 4(i), 5(a) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(l), 155(d) and 303(r). Because these amendments relate solely to agency management, the public notice procedure and effective date provisions of 5 U.S.C. 553 do not apply.

Note.—Rules changes herein will be covered by T.S. I(80)–1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80–40108 Filed 12–23–80; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1300

[Ex Parte No. 390]

Rail Rates Based on Limited Liability

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rule.

SUMMARY: The Commission is issuing a new tariff publishing rule to implement Section 211 of the Staggers Rail Act of 1980, which allows rail carriers to publish, without prior Commission approval, rates which limit carrier liability to an amount established by written declaration of the shipper or by a written agreement between the shipper and the carrier. The Commission believes that it is in the interest of shipper protection to establish, by regulation, a minimum standard for released-rate publication.

DATE: This rule will become effective December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley (202) 275–7348

SUPPLEMENTARY INFORMATION: Since early in this century, rail carriers have been required to obtain prior Commission approval for publishing rates that limit their liability for loss and damage to any amount less than the full value of the goods being shipped. However, Section 211 of the Staggers Rail Act of 1980 (Pub. L. 96–448) has now removed this requirement.[1] Specifically, Section 211 amended 49 U.S.C. 10730 by adding a new paragraph (c) which reads as follows:

> A rail carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may establish rates for transportation of property under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier, and may provide in such written declaration or agreement for specified amounts to be deducted from any claim against the carrier for loss or damage to the property or for delay in the transportation of such property.

While it is clear from this provision that limited-liability rates (released rates) may now be published without prior Commission approval, we believe it is necessary in the interest of shipper protection to establish minimum standards for released-rate publication. Any released rate published will be required to be clearly identified as applying only when (1) a certain value of the tendered property is declared by the shipper at the time of shipment on the bill of lading, or (2) the property is tendered under the terms of a contract entered into under 49 U.S.C. 10713, and such contract contains an agreement that the carrier's liability will be limited to a certain value.

This requirement will enable tariff users to distinguish between full-value and limited-value rates, and will ensure their awareness that the use of a limited-value rate is dependent upon a contractual arrangement—executed either on the bill of lading or in a contract entered into under 49 U.S.C. 10713.

Rail carriers will no longer be required to apply for permission from the Commission to file released rates. Therefore, the rail released rate orders issued by the Commission prior to the Staggers Act are no longer necessary or appropriate[2] and will be rescinded effective with the publication of this notice in the **Federal Register.** This rescission will not make rates published under those orders invalid. These rates may be maintained by the carrier so long as either (a) the shipper has agreed to the released-value rate or (b) the carrier also makes available to the shipper a full value rate. Any change or additions to released rates published before the Staggers Act should be made in accordance with the new procedures.

By this notice we are also reminding shippers and carriers that the new authority to publish limited-value rates without prior Commission approval does not in any way remove the carrier obligation, under the Interstate Commerce Act, to maintain full-value rates when shippers do not agree to released rates or where they desire full value as well as released rates. We do not view this as a problem for carriers. Existing full value rates may be complemented by released rates. So long as shippers have a choice between full and released value rates, there is no need to receive prior shipper approval for publication of the released rates (although it would still be subject to protest on other grounds such as unreasonableness.)

The Commission does not believe that adoption of this rule requires a notice and comment rulemaking procedure under 5 U.S.C. 553, because its only effect is to implement Congressional action.

Accordingly, we are amending Chapter X, Subchapter D, of Title 49 of the Code of Regulations, by adding § 1300.4(i)(11) to read as follows:

§ 1300.4 Content of tariffs.

* * * * *

(i) * * *

(11) Rates and liability based on value. (Applies only to rail common carriers.) A tariff may contain released-value rates, established without prior Commission authority, under which the liability of the carrier is limited to a value established by written declaration of the shipper or by written agreement between carrier and shipper. Such rates

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Footnotes continued from last page

Service and CCITT Recommendation E.200/F.100—Operational Provision for the Maritime Mobile Service.

[1] Section 211 also requires the Commission and the Attorney General independently to investigate and report to Congress on whether rail carriers should continue to be subject to bill of lading liability under 49 U.S.C. 11707. The reports are due by October 1, 1981.

[2] While the Motor Carrier Act provides a transition period during which prior released rate orders may continue to be relied on, the Staggers Act does not. The new provisions were effective October 1. No exemption from them was provided which would allow for continued use of those orders.

must be clearly identified as applying only when (i) a certain value of the tendered property is declared by the shipper at the time of shipment on the bill of lading, or (ii) when the property is tendered under the terms of a contract entered into under 49 U.S.C. 10713 and such contract contains an agreement that the carrier's liability will be limited to a certain value.

This Notice of Final Rule is issued under 5 U.S.C. 553, 49 U.S.C. 10730 and 49 U.S.C. 10762; and it does not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: December 10, 1980.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40116 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Entry and Use; Certain National Wildlife Refuge Areas, in Illinois, Iowa, Minnesota and Wisconsin

AGENCY: Fish and Wildlife Service.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening public entry and use of certain National Wildlife Refuges is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which public entry and use will be permitted on portions of certain National Wildlife Refuges in Illinois, Iowa, Minnesota and Wisconsin.

DATES: Effective on December 24, 1980 for duration of calendar year 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

George G. P. Bekeris, Area Manager, U.S. Fish and Wildlife Service, 530 Federal Building and U.S. Court House, 316 North Robert Street, St. Paul, MN 55101. Telephone: (612) 725-7641.

Robert L. Drieslein, Refuge Manager, Trempealeau National Wildlife Refuge, Route #1, Box 308, Trempealeau, WI 54661. Telephone: (309) 535-2290.

Robert Howard, Refuge Manager, Upper Mississippi Wildlife and Fish Refuge, 122 W. 2nd Street, Winona, MN 55987. Telephone: (507) 452-4232.

SUPPLEMENTARY INFORMATION: Public entry and use on portions of the following refuges shall be in accordance with all applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to public entry and use are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

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 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 (a) 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 these National Wildlife Refuges were 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.

§ 26.34 Special regulations concerning public access, use and recreation for individual national wildlife refuges.

Illinois, Iowa, Minnesota, Wisconsin

Upper Mississippi River Wildlife and Fish Refuge

Public access, use and recreation, including but not limited to, sightseeing, nature observation and photography, hiking/cross-country skiing, nature intepretation, boating, camping, picnicking and other similar activities are permitted on Upper Mississippi River Wildlife and Fish Refuge in accordance with all applicable federal, state and local laws and subject to the following special conditions:

(1) Boat mooring is prohibited within 200 feet of boat landings and access points and at other congested or sensitive areas which have been designated and/or posted with no mooring signs.

(2) Camping, defined as the use of tents; bedrolls; and all types of floating craft, motorized vehicles, trailers and other shelters for overnight stays or for the purpose of sleeping is permitted on Upper Mississippi River Wildlife and Fish Refuge subject to the following restrictions;

a. Camping is prohibited at all landings and access points except those specifically posted by sign to allow camping and at other congested or sensitive areas which have been designated
and/or posted with no camping signs.

b. Camping in areas designated and/or posted with "Area Closed" signs is prohibited during the waterfowl hunting season.

c. Camping while engaged in hunting is prohibited except on sites visible from the main commercial navigation channel of the Mississippi River.

d. Camping on the refuge while trapping is prohibited.

e. Camp fires are permitted on sand beaches and other areas devoid of combustible material, using only dead and down wood or imported material such as charcoal. Burying live fires on sand beaches is prohibited.

f. The length of stay by an individual or group at any one site or within 100 yards of such a site shall not exceed fourteen (14) consecutive days.

g. Tents or other camping equipment including floating craft and vehicles shall not be left at an unoccupied campsite for more than 24 hours. Such gear is considered abandoned and subject to impoundment.

(3) Willow may be used for trap stakes, commercial fishing gear and hunting blinds.

Wisconsin

Trempealeau National Wildlife Refuge

Non-consumptive, wildlife-orientated public use, including but not limited to hiking, non-motorized canoeing by refuge permit, wildlife observation, environmental education, wildlife photography and cross-country skiing, is permitted on 3,800 acres of Trempealeau National Wildlife Refuge. Motor vehicle use and operation is permitted on designated roads only. Areas posted with "Closed Area" signs are closed to any and all activities. The refuge is open

for use between the hours of sunrise and sunset only.

Richard E. Toltzmann

Acting Area Manager.

December 15, 1980

[FR Doc. 80-40194 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 351

Whaling

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Section 916k of the Whaling Convention Act, 16 U.S.C. 916 et seq., requires that the Secretary of Commerce publish the Schedule of the International Convention for the Regulation of Whaling, 1946, in the **Federal Register**, in order for it to "become effective with respect to all persons and vessels subject to the jurisdiction of the United States in accordance with the terms of such regulations * * *." This final rule consists of publication of the Schedule of the International Convention for the Regulation of Whaling and incorporates the most recent amendments.

EFFECTIVE DATE: The amendments to the Schedule became effective on November 25, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, NOAA, Department of Commerce, Washington, D.C. 20235, Telephone—(202) 634-7461.

SUPPLEMENTARY INFORMATION: At its 32nd Annual Meeting held in Brighton, England, in July 1980, the International Whaling Commission agreed to amend the Schedule inter alia to establish commercial whaling catch limits for the Southern Hemisphere 1980-81 pelagic and 1981 coastal seasons and for the Northern Hemisphere 1981 season and to prohibit the taking of killer whales by factory ship whaling operations.

Official amendments to the Schedule became available on August 28, 1980. By the terms of the Convention, these amendments became effective on November 25, 1980. This publication incorporates all amendments to the Schedule which were adopted at the 32nd Annual Meeting and have become binding on Contracting Governments.

Regulations under the Whaling Convention Act relating to the 1981, 1982, and 1983 harvest of bowhead whales by Alaskan Navtives will be published at a later date and will appear in 50 CFR Part 230.

Dated: December 18, 1980.

Robert K. Crowell,

Acting Executive Director, National Marine Fisheries Service.

Accordingly, 50 CFR Part 351 is revised in its entirety and reads as set forth below.

PART 351—WHALING

Subpart A—Interpretation

Sec.

351.1 Definitions.

Subpart B—Seasons

351.21 Use of factory ships and whale catchers.
351.22 Use of land stations and whale catchers.
351.23 Other operations.

Subpart C—Capture

351.30 [Reserved].
351.31 Indian Ocean sanctuary.
351.32 Area limits for factory ships.
351.33 Classification of areas and divisions.
351.34 Classification of stocks.
351.35 Catch limits for baleen whales.
351.36 Limitations on the taking of humpback, gray, and bowhead whales.
351.37 Taking of calves or suckling whales prohibited.
351.38 Size limits for sei, Bryde's and fin whales.
351.39 Catch limits for sperm whales.
351.40 Size limits for sperm whales.

Subpart D—Treatment

351.51 Processing of whales.
351.52 Regulation of processing.

Subpart E—Supervision and control

351.61 Inspection.
351.62 Remuneration of employees.
351.63 Measurement of whales.

Subpart F—Information required

351.71 Reports and records.
351.72 Submission of catch data and notification of closure.
351.73 Submission of statistical data.
351.74 Collection of specimens.
351.75 Review of scientific permits.
351.76 Submission of laws and regulations.

Authority: Article 5, 62 Stat. 1718, sec. 2-14, 64 Stat. 421-425; 16 U.S.C. 916 et seq.

Subpart A—Interpretation

§ 351.1 Definitions.

The following expressions have the meanings respectively assigned to them, that is to say:

Baleen whales

(a) "baleen whale" means any whale which has baleen or whale bone in the mouth, i.e. any whale other than a toothed whale.

(b) "blue whale" *(Balaenoptera musculus)* means any whale known as blue whale, Sibbald's rorqual, or sulphur bottom, and including pygmy blue whale.

(c) "bowhead whale" *(Balaena mysticetus)* means any whale known as bowhead, Arctic right whale, great polar whale, Greenland right whale, Greenland whale.

(d) "Bryde's whale" *(Balaenoptera edeni, B. brydei)* means any whale known as Bryde's whale.

(e) "fin whale" *(Balaenoptera physalus)* means any whale known as common finback, common rorqual, fin whale, herring whale, or true fin whale.

(f) "gray whale" *(Eschrichtius robustus)* means any whale known as gray whale, California gray, devil fish, hard head, mussel digger, gray back, or rip sack.

(g) "humpback whale" *(Megaptera novaeangliae)* means any whale known as bunch, humpback, humpback whale, humpbacked whale, hump whale or hunchback whale.

(h) "minke whale" *(Balaenoptera acutorostrata, B. bonaerensis)* means any whale known as lesser rorqual, little piked whale, minke whale, pike-headed whale or sharp headed finner.

(i) "pygmy right whale" *(Caperea marginata)* means any whale known as southern pygmy right whale, pygmy right whale.

(j) "right whale" *(Eubalaena glacialis, E. australis)* means any whale known as Atlantic right whale, Arctic right whale, Biscayan right whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, or southern right whale.

(k) "sei whale" *(Balaenoptera borealis)* means any whale known as sei whale, Rudolphi's rorqual, pollack whale, or coalfish whale.

Toothed whales

(a) "toothed whale" means any whale which has teeth in the jaws.

(b) "beaked whale" means any whale belonging to the genus *Mesoplodon*, or any whale known as Cuvier's beaked whale *(Ziphius cavirostris)*, or Shepherd's beaked whale *(Tasmacetus shepherdi)*.

(c) "bottlenose whale" means any whale known as Baird's beaked whale *(Berardius bairdii)*, Arnoux's whale *(Berardius arnuxii)*, southern bottlenose whale *(Hyperoodon planifrons)*, or northern bottlenose whale *(Hyperoodon ampullatus)*.

(d) "killer whale" *(Orcinus orca)* means any whale known as killer whale or orca.

(e) "pilot whale" means any whale known as long-finned pilot whale *(Globicephala melaena)* or short-finned pilot whale. *(G. macrorhynchus.)*

(f) "sperm whale" *(Physeter macrocephalus)* means any whale known as sperm whale, spermacet whale, cachalot or pot whale.

General

(a) "strike" means to penetrate with a weapon used for whaling.

(b) "take" means to flag, buoy or make fast to a whale catcher.

(c) "land" means to retrieve to a factory ship, land station, or other place where a whale can be treated.

(d) "lose" means to either strike or take but not land.

(e) "dauhval" means any unclaimed dead whale found floating.

(f) "lactating whale" means (1) with respect to baleen whales—a female which has any milk present in a mammary gland, (2) with respect to sperm whales—a female which has milk present in a mammary gland the maximum thickness (depth) of which is 10 cm or more. This measurement shall be at the mid ventral point of the mammary gland perpendicular to the body axis, and shall be logged to the nearest centimetre; that is to say, any gland between 9.5 cm and 10.5 cm shall be logged as 10 cm. The measurement of any gland which falls on an exact 0.5 centimetre shall be logged at the next 0.5 centimetre, eg 10.5 cm shall be logged as 11.0 cm.

However, notwithstanding these criteria, a whale shall not be considered a lactating whale if scientific (histological or other biological) evidence is presented to the appropriate national authority establishing that the whale could not at that point in its physical cycle have had a calf dependent on it for milk.

(g) "small-type whaling" means catching operations using powered vessels with mounted harpoon guns hunting exclusively for minke, bottlenose, beaked, pilot or killer whales.

Subpart B—Seasons

§ 351.21 Use of factory ships and whale catchers.

(a) It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating baleen whales except minke whales, in any waters south of 40° South Latitude, except during the period from 12th December to 7th April following, both days inclusive.

(b) It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating sperm or minke whales, except as permitted by the Contracting Governments in accordance with paragraphs (c) and (d) of this section, and § 351.23.

(c) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction, an open season or seasons not to exceed eight months out of any period of twelve months during which the taking or killing of sperm whales by whale catchers may be permitted; provided that a separate open season may be declared for each factory ship and the whale catchers attached thereto.

(d) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by the whale catchers may be permitted provided that:

(1) A separate open season may be declared for each factory ship and the whale catchers attached thereto;

(2) The open season need not necessarily include the whole or any part of the period declared for other baleen whales pursuant to paragraph (a) of this section.

(e) It is forbidden to use a factory ship which has been used during a season in any waters south of 40° South Latitude for the purpose of treating baleen whales, except minke whales, in any other area except the North Pacific Ocean and its dependent waters north of the Equator for the same purpose within a period of one year from the termination of that season; provided that catch limits in the North Pacific Ocean and dependent waters are established as provided in § 351.35(b) and § 351.39(b) of this part and provided that this section shall not apply to a ship which has been used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.

§ 351.22 Use of land stations and whale catchers.

(a) It is forbidden to use a whale catcher attached to a land station for the purpose of killing or attempting to kill baleen and sperm whales except as permitted by the Contracting Government in accordance with paragraphs (b), (c) and (d) of this section.

(b) Each Contracting Government shall declare for all land stations under its jurisdiction, and whale catchers attached to such land stations, one open season during which the taking or killing of baleen whales, except minke whales, by the whale catchers shall be permitted. Such open season shall be for a period of not more than six consecutive months in any period of twelve months and shall apply to all land stations under the jurisdiction of the Contracting Government; provided that a separate open season may be declared for any land station used for the taking or treating of baleen whales, except minke whales, which is more than 1,000 miles from the nearest land station used for the taking or treating of baleen whales, except minke whales, under the jurisdiction of the same Contracting Government.

(c) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations, one open season not to exceed eight continuous months in any one period of twelve months, during which the taking or killing of sperm whales by the whale catchers shall be permitted, provided that a separate open season may be declared for any land station used for the taking or treating of sperm whales which is more than 1,000 miles from the nearest land station used for the taking or treating of sperm whales under the jurisdiction of the same Contracting Government.

(d) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations one open season not to exceed six continuous months in any period of twelve months during which the taking or killing of minke whales by the whale catchers shall be permitted (such period not being necessarily concurrent with the period declared for other baleen whales, as provided for in paragraph (b) of this section); provided that a separate open season may be declared for any land station used for the taking or treating of minke whales which is more than 1,000 miles from the nearest land station used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government. Except that a separate open season may be declared for any land station used for the taking or treating of minke whales which is located in an area having oceanographic conditions clearly distinguishable from those of the area in which are located the other land stations used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government; but the declaration of a separate open season by virtue of the provisions of this paragraph shall not cause thereby the period of time covering the open seasons declared by the same

Contracting Government to exceed nine continuous months of any twelve months.

(e) The prohibitions contained in this section shall apply to all land stations as defined in Article II of the Whaling Convention of 1946.

§ 351.23 Other operations.

Each Contracting Government shall declare for all whale catchers under its jurisdiction not operating in conjunction with a factory ship or land station one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by such whale catchers may be permitted. Notwithstanding this section one continuous open season not to exceed nine months may be implemented so far as Greenland is concerned.

Subpart C—Capture

§ 351.30 Reserved.

§ 351.31 Indian Ocean sanctuary.

In accordance with Article V(1)(c) of the Convention, commercial whaling, whether by pelagic operations or from land stations, is prohibited in a region designated as the Indian Ocean Sanctuary. This comprises the waters of the Northern Hemisphere from the coast of Africa to 100 degrees East, including the Red and Arabian Seas and the Gulf of Oman; and the waters of the Southern Hemisphere in the sector from 20 degrees East to 130 degrees East, with the Southern boundary set at 55 degrees South. This prohibition applies irrespective of the classifications of baleen or toothed whale stocks in the Sanctuary, as may from time to time be determined by the Commission. This prohibition will apply for ten years from 24 October 1979 with the provision for a general review after five years, unless the Commission decides otherwise.

§ 351.32 Area limits for factory ships.

It is forbidden to use a factory ship or whale catcher attached thereto, for the purpose of taking or treating baleen whales, except minke whales, in any of the following areas:

(a) in the waters north of 66° North Latitude, except that from 150° East Longitude eastwards as far as 140° West Longitude, the taking or killing of baleen whales by a factory ship or whale catcher shall be permitted between 66° North Latitude and 72° North Latitude;

(b) in the Atlantic Ocean and its dependent waters north of 40° South Latitude;

(c) in the Pacific Ocean and its dependent waters east of 150° West Longitude between 40° South Latitude and 35° North Latitude;

(d) in the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;

(e) in the Indian Ocean and its dependent waters north of 40° South Latitude.

§ 351.33 Classification of areas and divisions.

(a) Classification of areas. Areas relating to Southern Hemisphere baleen whales except Bryde's whales are those waters between the ice-edge and the Equator and between the meridians of longitude listed in Table 1.

(b) Classification of divisions. Divisions relating to Southern Hemisphere sperm whales are those waters between the ice-edge and the Equator and between the meridians of longitude listed in Table 3.

(c) Geographical boundaries in the North Atlantic.

The geographical boundaries for the fin, minke and sei whale stocks in the North Atlantic are:

Fin whale stocks

Nova Scotia, South and West of a line through: 47° N 54° W, 46° N 54°30′ W, 46° N 42° W, 20° N 42° W.

Newfoundland—Labrador, West of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, 46° N 42° W and North of a line through: 46° N 42° W, 46° N 54°30′ w, 47° N 54° W.

West Greenland, East of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, and West of a line through: 52°20′ N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel.

East Greenland—Iceland, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

North Norway, North and East of a line through: 74° N 22° W, 74° N 3° E, 68° N 3° E, 67° N 0°, 67° N 14° E.

West Norway and Faroe Islands, South of a line through: 67° N 14° E, 67° N 0°, 60° N 18° W, and North of a line through: 61° N 16° W, 61° N 0°, Thyboron (western entrance to Limfjorden, Denmark).

British Isles—Spain and Portugal, South of a line through: Thyboron (Denmark), 61° N 0°, 61° N 16° W, and East of a line through: 63° N 11° W, 60° N 18° W, 22° N 18° W.

Minke whale stocks

Canadian East Coast, West of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, 20° N 42° W.

West Greenland, East of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, and West of a line through: 52°20′ N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel.

Central, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Northeastern, East of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and North of a line through: 74° N 3° E, 74° N 22° W.

Sei whale stocks

Nova Scotia, South and West of a line through: 47° N 54° W, 46° N 54°30′ W, 46° N 42° W, 20° N 42° W.

Iceland—Denmark Strait, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Eastern, East of a line through: 20°N 18°W, 60°N 18°W, 68°N 3°,E 74°N 30°E and North of a line through: 74°N 3°E, 74°N 22°W.

(d) Geographical boundaries in the North Pacific.

The geographical boundaries for the sperm and Bryde's whale stocks in the North Pacific are:

Sperm whale stocks

Western Division

West of a line from the ice-edge south along the 180° meridian of longitude to 180°, 50°N, then east along the 50°N parallel of latitude to 160°W, 50°N, then south along the 160°W meridian of longitude to 160°W, 40°N, then east along the 40°N parallel of latitude to 150°W, 40°N, then south along the 150°W meridian of longitude to the Equator.

Eastern Division

East of the line described above.

Bryde's whale stocks

Western Stock

West of the 160°W meridian of longitude.

Eastern Stock

East of the 160°W meridian of longitude.

(e) Geographical boundaries for Bryde's whale stocks in the Southern Hemisphere and Northern Indian Ocean.

Indian Ocean, 20°E to the Australian coast, 40°S to the coast north of the Equator.

Solomon Islands, 150°E to 170°E, 20°S to 10°S.

Western South Pacific, Australian coast to 150°W, 40°S to the Equator (excluding the Solomon Islands stock area).

Peruvian, 110°W to the South American coast, 10°S to 10°N.

Eastern South Pacific, 150°W to the South American coast, 40°S to the Equator (excluding the Peruvian stock area).

§ 351.34 Classification of stocks.

All stocks of whales shall be classified in one of three categories according to the advice of the Scientific Committee as follows:

(a) A Sustained Management Stock (SMS) is a stock which is not more than 10 per cent of Maximum Sustainable Yield (hereinafter referred to as MSY) stock level below MSY stock level, and not more than 20 per cent above that level; MSY being determined on the basis of the number of whales.

(1) When a stock has remained at a stable level for a considerable period under a regime of approximately constant catches, it shall be classified as a Sustained Management Stock in the absence of any positive evidence that it should be otherwise classified.

(2) Commercial whaling shall be permitted on Sustained Management Stocks according to the advice of the Scientific Committee. These stocks are listed in Tables 1, 2, and 3 of this part.

(3) For stocks at or above the MSY stock level, the permitted catch shall not exceed 90 per cent of the MSY. For stocks between the MSY stock level and 10 per cent below that level, the permitted catch shall not exceed the number of whales obtained by taking 90 per cent of the MSY and reducing that number by 10 per cent for every 1 per cent by which the stock falls short of the MSY stock level.

(b) An Initial Management Stock (IMS) is a stock more than 20 per cent of MSY stock level above MSY stock level. Commercial whaling shall be permitted on Initial Management Stocks according to the advice of the Scientific Committee as to measures necessary to bring the stocks to the MSY stock level and then optimum level in an efficient manner and without risk of reducing them below this level. The permitted catch for such stocks will not be more than 90 per cent of MSY as far as this is known, or, where it will be more appropriate, catching effort shall be limited to that which will take 90 per cent of MSY in a stock at MSY stock level.

(1) In the absence of any positive evidence that a continuing higher percentage will not reduce the stock below the MSY stock level no more than 5 per cent of the estimated initial exploitable stock shall be taken in any one year. Exploitation should not commence until an estimate of stock size has been obtained which is satisfactory in the view of the Scientific Committee. Stocks classified as Initial Management Stock are listed in Tables 1, 2, and 3 of this part.

(c) A Protection Stock (PS) is a stock which is below 10 per cent of MSY stock level below MSY stock level.

(1) There shall be no commercial whaling on Protection Stocks. Stocks so classified are listed in Tables 1, 2, and 3 of this part.

(d) Notwithstanding the other provisions of section 351.34, there shall be a moratorium on the taking, killing, or treating of whales, excluding minke whales, by factory ships or whale catchers attached to factory ships. This moratorium applies to sperm whales, killer whales and baleen whales, excluding minke whales.

§ 351.35 Catch limits for baleen whales.

(a) The number of baleen whales taken in the Southern Hemisphere in the 1980/81 pelagic season and the 1981 coastal season shall not exceed the limits shown in Tables 1 and 2. However, in no circumstances shall the sum of the Area catches exceed the total catch limits for each species.

(b) The number of baleen whales taken in the North Pacific Ocean and dependent waters in 1981 and in the North Atlantic Ocean in 1981 shall not exceed the limits shown in Tables 1 and 2.

§ 351.36 Limitations on the taking of humpback, gray, and bowhead whales.

(a) Notwithstanding the provisions of § 351.34:

(1) The taking of 10 humpback whales not below 35 feet (10.7 metres) in length, per year is permitted in Greenland waters provided that whale catchers of less than 50 gross register tonnage are used for this purpose.

(2) The taking of bowhead whales from the Bering Sea stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines, and further provided that:

(i) For the years 1981 through 1983, inclusive, the total number of whales landed shall not exceed 45 and the total number of whales struck shall not exceed 65, provided, however, that in any one year the number of whales landed shall not exceed 17,

(ii) It is forbidden to strike, take or kill calves or any bowhead whale accompanied by a calf.

(b) The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by aborigines or a Contracting Government on behalf of aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines. The number of gray whales taken in accordance with this paragraph in 1981 shall not exceed the limit shown in Table 1.

§ 351.37 Taking of calves or suckling whales prohibited.

It is forbidden to take or kill suckling calves or female whales accompanied by calves.

§ 351.38 Size limits for sei, Bryde's and fin whales.

(a) It is forbidden to take or kill any sei or Bryde's whales below 40 feet (12.2 metres) in length except that sei and Bryde's whales of not less than 35 feet (10.7 metres) may be taken for delivery to land stations, provided that, the meat of such whales is to be used for local consumption as human or animal food.

(b) It is forbidden to take or kill any fin whales below 57 feet (17.4 metres) in length in the Southern Hemisphere, and it is forbidden to take or kill fin whales below 55 feet (16.8 metres) in the Northern Hemisphere; except that fin whales of not less than 55 feet (16.8 metres) may be taken in the Southern Hemisphere for delivery to land stations and fin whales of not less than 50 feet (15.2 metres) may be taken in the Northern Hemisphere for delivery to land stations, provided that, in each case the meat of such whales is to be used for local consumption as human or animal food.

§ 351.39 Catch limits for sperm whales.

(a) The number of sperm whales taken in the Southern Hemisphere in the 1980/81 pelagic season and the 1981 coastal season shall not exceed the limits shown in Table 3.

(b) The number of sperm whales taken in the North Pacific Ocean and dependent waters in 1981 and in the North Atlantic Ocean in 1981 shall not exceed the limits shown in Table 3.

§ 351.40 Size limits for sperm whales.

(a) It is forbidden to take or kill any sperm whales below 30 feet (9.2 metres) in length except in the North Atlantic Ocean where it is forbidden to take or kill any sperm whales below 35 feet (10.7 metres).

(b) It is forbidden to take or kill any sperm whale over 45 feet (13.7 metres) in length in the Southern Hemisphere north of 40° South Latitude during the months of October to January inclusive.

(c) It is forbidden to take or kill any sperm whale over 45 feet (13.7 metres) in length in the North Pacific Ocean and dependent waters south of 40° North Latitude during the months of March to June inclusive.

Subpart D—Treatment

§ 351.51 Processing of whales.

(a) It is forbidden to use a factory ship or a land station for the purpose of treating any whales which are classified as Protection Stocks in § 351.34 or are taken in contravention of §§ 351.21, 351.22, 351.23, 351.30, 351.31, 351.32, 351.35, and 351.39 of this part, whether or not taken by whale catchers under the jurisdiction of a Contracting Government.

(b) All other whales taken, except minke whales, shall be delivered to the factory ship or land station and all parts of such whales shall be processed by boiling or otherwise, except the internal organs, whale bone and flippers of all whales, the meat of sperm whales and

of parts of whales intended for human food or feeding animals. A Contracting Government may in less developed regions exceptionally permit treating of whales without use of land stations, provided that such whales are fully utilized in accordance with this section.

(c) Complete treatment of the carcases of "dauhval" and of whales used as fenders will not be required in cases where the meat or bone of such whales is in bad condition.

§ 351.52 Regulation of processing.

(a) The taking of whales for treatment by a factory ship shall be so regulated or restricted by the master or person in charge of the factory ship that no whale carcase (except of a whale used as a fender, which shall be processed as soon as is reasonably practicable) shall remain in the sea for a longer period than thirty-three hours from the time of killing to the time when it is hauled up for treatment.

(b) Whales taken by all whale catchers, whether for factory ships or land stations, shall be clearly marked so as to identify the catcher and to indicate the order of catching.

Table 1.—*Bleen Whale Stock Classifications and Catch Limits (excluding Bryde's whales)*

Southern Hemisphere—1980/81 pelagic season and 1981 coastal season

Area	Longitudes	Sei		Minke		Fin		Blue	Humpback	Right Bowhead, Pygmy	Gray	
		Classification	Catch limit	Classification	Catch limit	Classification	Catch limit	Classification	Classification	Classification	Classification	Catch limit
I	120°W–60°W	PS	0		910	PS	0	PS	PS	PS		
II	60°W–0°W	PS	0		1,176	PS	0	PS	PS	PS		
III	0°–70°E	PS	0		1,237	PS	0	PS	PS	PS		
IV	70°E–130°E	PS	0		2,386	PS	[4]0	PS	PS	PS		
V	130°E–170°W	PS	0		1,250	PS	0	PS	PS	PS		
VI	170°W–120°W	PS	0		467	PS	0	PS	PS	PS		
Total catch not to exceed:			0		7,072		0	0	0	0		
NORTHERN HEMISPHERE—1981 season												
ARCTIC										PS		
NORTH PACIFIC												
Whole region		PS	0			PS	0	PS	PS	PS		
Okhotsk Sea-West Pacific Stock				SMS	[1]421							
Sea of Japan-Yellow Sea-East China Stock.				[2]SMS	[3]940							
Remainder				IMS	[4]0							
Eastern Stock											SMS	[5]179
Western Stock											PS	0
NORTH ATLANTIC												
Whole region								PS	PS	PS		
West Greenland Stock				SMS	[6]444	[2]SMS	6					
Newfoundland-Labrador Stock						IMS	90					
Canadian East Coast Stock					[7]0							
Nova Scotia Stock		PS	0			PS	0					
Central Stock				SMS	320							
East Greenland-Iceland Stock						SMS	[8]304					
Iceland-Denmark Strait Stock		SMS	[9]100									
Spain-Portugal-British Isles Stock						SMS	[10]240					
Northeastern Stock				SMS	1,790							
West Norway-Faroe Islands Stock						PS	0					
North Norway Stock						SMS	61					
Eastern Stock			0									
NORTHERN INDIAN OCEAN								PS	PS	PS		

[1] The total catch of minke whales shall not exceed 1,678 in the five years 1980 to 1984 inclusive.
[2] Provisionally listed as SMS for 1981.
[3] The total catch of minke whales shall not exceed 3,634 in the five years 1980 to 1974 inclusive.
[4] Pending a satisfactory estimate of stock size.
[5] Available to be taken by aborigines or a Contracting Government on behalf of aborigines pursuant to paragraph 13b.
[6] The total catch of minke whales shall not exceed 1,778 in the five years 1981 to 1985 inclusive.
[7] Pending submission of data leading to an adequate assessment.
[8] The total catch of fin whales shall not exceed 1,524 in the six years 1977 to 1982 inclusive.
[9] The total catch of sei whales shall not exceed 504 in the six years 1980 to 1985 inclusive.
[10] The total catch of fin whales shall not exceed 440 in the two years 1980 and 1981.

Table 2.—BRYDE'S WHALE STOCK CLASSIFICATION AND CATCH LIMITS

[Southern Hemisphere and Northern Indian Ocean 1980–81 pelagic season and 1981 coastal season]

	Classification	Catch limit
South Atlantic stock	IMS	0
Indian Ocean stock	IMS	197
Solomon Islands stock	IMS	0
Western South Pacific stock	IMS	237
Peruvian stock	SMS	264
Eastern South Pacific stock	IMS	188

[Southern Hemisphere and Northern Indian Ocean 1980–81 pelagic season and 1981 coastal season]

	Classification	Catch limit
North Pacific—1981 season:		
Eastern stock	IMS	[1]0
Western stock	SMS	510
East China Sea stock	SMS[2]	19
North Atlantic—1981 season	IMS	[1]0

[1] Pending a satisfactory estimate of stock size.
[2] Provisionally listed as SMS for 1981.

TABLE 3.—TOOTHED WHALE STOCK CLASSIFICATION AND CATCH LIMITS

[Southern Hemisphere 1980-81 pelagic season and 1981 coastal season]

Divisions	Longitudes	Sperm		Bottlenose classification
		Classification	Catch limit	
1	60°W- 30°W			
2	30°W- 20°E			
3	20°E- 60°E			
4	60°E- 90°E			
5	90°E-130°E			
6	130°E-160°E			
7	160°E-170°W			
8	170°W-100°W			
9	100°W- 60°W		[1]300	
[Northern Hemisphere—1981 season]				
North Pacific:				
Western				
Division:				
Males		[2] [3]890		
Females			0	
Eastern				
Division:				
Males			0	
Females			0	
North				
Atlantic:				
Males			130	[4]PS
Females				[4]PS
Northern				
Indian				
Ocean			0	

[1] The catch in 1982 shall be zero.
[2] Included within this figure there may be a by-catch of females not to exceed 11.5% and all whaling operations for this species are to cease when the by-catch is reached.
[3] It is forbidden to take or kill any sperm whale from this stock over 45 feet (13.7 metres) in length in the 1981 season.
[4] Provisionally listed as PS for 1981 pending the accumulation of sufficient information for classification.

Subpart E—Supervision and Control

§ 351.61 Inspection

(a) There shall be maintained on each factory ship at least two inspectors of whaling for the purpose of maintaining twenty-four-hour inspection provided that at least one such inspector shall be maintained on each catcher functioning as a factory ship. These inspectors shall be appointed and paid by the Government having jurisdiction over the factory ship; provided that inspectors need not be appointed to ships which, apart from the storage of products, are used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.

(b) Adequate inpsection shall be maintained at each land station. The inspectors serving at each land station shall be appointed and paid by the Government having jurisdiction over the land station.

(c) There shall be received such observers as the member countries may arrange to place on factory ships and land stations or groups of land stations of other member countries: The observers shall be appointed by the Commisson acting through its Secretary and paid by the Government nominating them.

§ 351.62 Remuneration of employees.

Gunners and crews of factory ships, land stations, and whale catchers, shall be engaged on such terms that their remuneration shall depend to a considerable extent upon such factors as the species, size and yield of whales taken and not merely upon the number of the whales taken. No bonus or other remuneration shall be paid to the gunners or crews of whale catchers in respect of the taking of lactating whales.

§ 351.63 Measurement of whales.

(a) Whales must be measured when at rest on deck or platform after the hauling out wire and grasping device have been released, by means of a tape-measure made of a non-stretching material. The zero end of the tape-measure shall be attached to a spike or stable device to be positioned on the deck or platform abreast of one end of the whale. Alternatively the spike may be stuck into the tail fluke abreast of the apex of the notch. The tape-measure shall be held taut in a straight line parallel to the deck and the whale's body, and other than in exceptional circumstances along the whale's back, and read abreast of the other end of the whale. The ends of the whale for measurement purposes shall be the tip of the upper jaw, or in sperm whales the most forward part of the head, and the apex of the notch between the tail flukes.

(b) Measurements shall be logged to the nearest foot or 0.1 metres. That is to say, any whale between 75 feet 6 inches and 76 feet 6 inches shall be logged as 76 feet, and any whale between 76 feet 6 inches and 77 feet 6 inches shall be logged as 77 feet. Similarly, any whale between 10.15 metres and 10.25 metres shall be logged as 10.2 metres, and any whale between 10.25 metres and 10.35 metres shall be logged as 10.3 metres. The measurement of any whale which falls on an exact half foot or 0.05 metre shall be logged at the next half foot or 0.05 metre, e.g. 76 feet 6 inches precisely shall be logged as 77 feet and 10.25 metres precisely shall be logged as 10.3 metres.

Subpart F—Information required

§ 351.71 Reports and records.

(a) All whale catchers operating in conjunction with a factory ship shall report by radio to the factory ship:

(1) The time when each whale is taken;

(2) Its species; and

(3) Its marking effected pursuant to § 351.52(b).

(b) The information specified in paragraph (a) of this section shall be entered immediately by a factory ship in a permanent record which shall be available at all times for examination by the whaling inspectors; and in addition there shall be entered in such permanent record the following information as soon as it becomes available:

(1) Time of hauling up for treatment,

(2) Length, measured pursuant to § 351.63,

(3) Sex,

(4) If female, whether lactating,

(5) Length and sex of foetus, if present, and

(6) A full explanation of each infraction.

(c) A record similar to that described in paragraph (b) of this section shall be maintained by land stations, and all of the information mentioned in the said paragraph shall be entered therein as soon as available.

(d) A record similar to that described in paragraph (b) of this section shall be maintained by "small-type whaling" operations conducted from shore or by pelagic fleets, and all of this information mentioned in the said paragraph shall be entered therein as soon as available.

(e) All Contracting Governments shall report to the Commission for all whale catchers operating in conjunction with factory ships and land stations the following information:

(1) Methods used to kill each whale, other than a harpoon, and in particular compressed air, and

(2) Number of whales struck but lost.

(f) A record similar to that described in paragraph (e) of this section shall be maintained by vessels engaged in "small-type whaling" operations and by native peoples taking species listed in § 351.1, and all the information mentioned in the said paragraph shall be entered therein as soon as available, and forwarded by Contracting Governments to the Commission.

§ 351.72 Submission of catch data and notification of closure.

(a) Notification shall be given in accordance with the provision of Article VII of the Convention, within two days after the end of each calendar week, of data on the number of baleen whales by

species taken in any waters south of 40° South Latitude by all factory ships or whale catchers attached thereto under the jurisdiction of each Contracting Government, provided that when the number of each of these species taken is deemed by the Bureau of International Whaling Statistics to have reached 85 percent of whatever total catch limit is imposed by the Commission notification shall be given as aforesaid at the end of each day of data on the number of each of these species taken.

(b) If it appears that the maximum catches of whales permitted by § 351.35(a) may be reached before 7th April of any year, the Bureau of International Whaling Statistics shall determine, on the basis of the data provided, the date on which the maximum catch of each of these species shall be deemed to have been reached and shall notify the master of each factory ship and each Contracting Government of that date not less than four days in advance thereof. The taking or attempting to take baleen whales, so notified, by factory ships or whale catchers attached thereto shall be illegal in any waters south of 40° South Latitude after midnight of the date so determined.

(c) Notification shall be given in accordance with the provisions of Article VII of the Convention of each factory ship intending to engage in whaling operations in any waters south of 40° South Latitude.

§ 351.73 Submission of statistical data.

(a) Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and catcher ships of the following statistical information:

(1) Concerning the number of whales of each species taken, the number thereof lost, and the number treated at each factory ship or land station, and

(2) As to the aggregate amounts of oil of each grade and quantities of meal, fertiliser (guano), and other products derived from them, together with

(3) Particulars with respect to each whale treated in the factory ship, land station or "small-type whaling" operations as to the date and approximate latitude and longitude of taking, the species and sex of the whale, its length and, if it contains a foetus, the length and sex, if ascertainable, of the foetus. The data referred to in paragraph (a) (1) and (3) of this section shall be verified at the time of the tally and there shall also be notification to the Commission of any information which may be collected or obtained concerning the calving grounds and migration of whales.

(b) Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and catcher ships of the following statistical information:

(1) The name and gross tonnage of each factory ship, and

(2) For each catcher ship attached to a factory ship or land station:

(i) The dates on which each is commissioned and ceases whaling for the season,

(ii) The number of days on which each is at sea on the whaling grounds each season, and

(iii) The gross tonnage, horsepower, length and other characteristics of each; vessels used only as tow boats should be specified.

(3) A list of the land stations which were in operation during the period concerned, and the number of miles searched per day by aircraft, if any.

(c) The information required under paragraph (b)(2)(iii) should also be recorded together with the following information, in the log book format shown in Appendix A, and forwarded to the Commission:

(1) Where possible the time spent each day on different components of the catching operation, and

(2) Any modifications of the measures in paragraphs (b)(2)(i)–(iii) or (c)(1) or data from other suitable indicators of fishing effort for "small-type whaling" operations.

§ 351.74 Collection of specimens.

(a) Where possible all factory ships and land stations shall collect from each whale taken and report on:

(1) Both ovaries or the combined weight of both testes, and

(2) At least one ear plug, or one tooth (preferably first mandibular).

(b) Where possible similar collections to those described in paragraph (a) of this section shall be undertaken and reported by small-type whaling operations conducted from shore or by pelagic fleets.

(c) All specimens collected under paragraphs (a) and (b) shall be properly labeled with the platform or other identification number of the whale and be appropriately preserved.

(d) Contracting Governments shall arrange for the analysis as soon as possible of the tissue samples and specimens collected under paragraphs (a) and (b) and report to the Commission on the results of such analyses.

§ 351.75 Review of scientific permits.

(a) A Contracting Government shall provide the Secretariat with proposed scientific permits before they are issued and in sufficient time to allow the Scientific Committee to review and comment on them. The proposed permits should specify:

(1) Objectives of the research;

(2) Number, sex, size and stock of the animals to be taken;

(3) Opportunities for participation in the research by scientists of other nations; and

(4) Possible effect on conservation of the stock.

(b) Proposed permits shall be reviewed and commented on by the Scientific Committee at Annual Meetings when possible. When permits would be granted prior to the next Annual Meeting, the Secretary shall send the proposed permits to members of the Scientific Committee by mail for their comment and review. Preliminary results of any research from the permits should be made available at the next Annual Meeting of the Scientific Committee.

§ 351.76 Submission of laws and regulations.

A Contracting Government shall transmit to the Commission copies of all its official laws and regulations relating to whales and whaling and changes in such laws and regulations.

Appendix A

Table 1.—*Daily Record Sheet*

Date	Catcher name	Sheet No	
Searching:			
Time started (or resumed) searching			
Time whales seen *or reported to catcher**			
Whale species			
Number seen and No. of groups			
Position found			
Name of catcher that found whales			
Chasing:			
Time started chasing (or confirmed whales)			
Time whale shot or chasing discontinued			
Asdic used (Yes/No)			
Handling:			
Time whale flagged or alongside for towing			
Serial No. of catch			

Appendix A —Continued

Table 1.—*Daily Record Sheet* —Continued

Towing:
Time started picking up
Time finished picking up or starting towing
Date and time delivered to factory
Resting:
Time stopped (for drifting or resting)
Time finished drifting/resting
Time ceased operations

Total searching time

Weather Conditions

Total chasing time:
(A) with asdic

	Time	Sea state	Wind force and direction	Visibility
(B) without asdic				
Total handling time				
Total towing time				
Total resting time				
Other time (e.g. bunkering, in port)				

Whales Seen (No. and No. of schools)

Blue		Bryde	
Fin		Minke	
Humpback		Sperm	
Right		Others	
Sei		(specify)	

Signed

*Time whales reported to catcher means the time when the catcher is told of the position of a school and starts to move towards it to chase it.

TABLE 2.—*Schooling Report*

To be completed by pelagic expedition or coastal station for each sperm whale school chased. A separate form to be used each day.
Name of expedition or coastal station
Date Noon position of factory ship

Time School Found
Total Number of Whales in School
Number of Takeable Whales in School
Number of Whales Caught from School by each Catcher
Name of Catcher
Name of Catcher
Name of Catcher
Name of Catcher
Total Number caught from school

Remarks:

Explanatory Notes

A. Fill in one column for each school chased with number of whales caught by each catcher taking part in the chase; if catchers chase the school but do not catch any whales from it, enter 0; for catchers in fleet which do not chase that school enter X.

B. A school on this form means a group of whales which are sufficiently close together that a catcher having completed handling one whale can start chasing another whale almost immediately without spending time searching. A solitary whale should be entered as a school of 1 whale.

C. A takeable whale is a whale of a size or kind which the catchers would take if possible. It does not necessarily include all whales above legal size, e.g. if catchers are concentrating on large whales only these would be counted as takeable.

D. Information about catchers from other expeditions or companies operating on the same school should be recorded under Remarks.

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Proposed Rules

Federal Register
Vol. 45, No. 249
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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

Commodity Credit Corporation

7 CFR Parts 1421, 1446

1981 Peanut Program; Proposed Determinations Regarding a Loan and Purchase Program for the 1981 Crop of Peanuts

AGENCY: Commodity Credit Corporation, U.S. Department of Agriculture.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make determinations and issue regulations concerning a loan and purchase program, sales policy, and other related matters, for the 1981 crop of peanuts. The loan and purchase program is authorized by the Agricultural Act of 1949, as amended.

The program is intended to stabilize market prices and to protect producers, handlers, processors and consumers. This notice invites comments on these proposed determinations.

DATES: Written comments must be received on or before January 30, 1981.

ADDRESS: Send comments to Director, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, Room 3741 South Building, P.O. Box 2415, Washington, D.C. 20013.

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

SUPPLEMENTARY INFORMATION: This proposed determination 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 1146.30 through 1146.50 for need, currency, clarity and effectiveness, will be made within the next five years. The determination for the national average loan level for additional peanuts is required by statute to be made by the Secretary no later than February 15, 1981. Final Actions on these proposed determinations for 1981-crop purposes should be made as soon as possible to allow peanut producers an opportunity to make financial plans in accordance with program requirements. Therefore, I have determined that it is impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Accordingly, all comments must be received by January 30, 1981, in order to be assured of consideration. This will allow the Secretary sufficient time to properly consider the comments received before the final program determinations are made.

The need for making the proposed determinations is to satisfy the statutory requirements as provided for in Section 108(a) of the Agricultural Act of 1949, as amended.

The title and number of the federal assistance program that this proposed 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.

The following determinations are required to be made by the Secretary in accordance with the provisions of Section 108(a) of the 1949 Act, as added by the Food and Agriculture Act of 1977:

Proposed Determinations

1. *The national level of support for 1981-crop quota peanuts.* Section 108(a) of the Agricultural Act of 1949, as amended, (hereinafter referred to as the "Act") provides that the Secretary shall make price support available to producers through loans, purchases, or other operations on quota peanuts at such levels as the Secretary finds appropriate, but not less than $420 per ton. The Act further provides that in determining the levels of price support, the Secretary is to take into consideration the following 9 factors:

(a) *Index of prices paid for production items, interest, taxes and wage rates.* The projected increase in the Prices Paid Index (1910–1914) during 1980 was about 10.1 percent. A comparable increase in the 1980-crop price support level of $455 per ton would result in a loan rate of about $500 per ton.

(b) *Supply of the Commodity in relation to demand.* The estimated supply of 1981-crop peanuts is projected to exceed estimated requirements for domestic edible use, exports and carryover based on the following data:

1981-Crop Peanuts—Projected Supply and Demand With Most Likely U.S. Weather, 1981 Marketing Year

	1,000 tons
Projected supply:	
Carryin	75
Marketing and imports	1,926
Total Supply	2,001
Projected demand:	
Domestic edible and related	1,205
Exports	425
Loan Surplus	56
Total Demand	1,686
Carryover	315

(c) *Price Levels at which other commodities are being supported.* The 1981 peanuts quota loan options under consideration ($455, $500 and $526 per ton) range from 58 to 68 percent of November 1980 parity. Of the 1981 price support levels announced, dairy at 80 percent reflects a higher percentage of parity. The 1981 support for upland cotton at 47 percent and ELS cotton at 55 percent reflect a lower percentage of parity.

Commodity	Price support level
Dairy (cwt.)	$12.80
Upland Cotton (lb.)	00.5246
ELS Cotton (lb.)	00.99

(d) *Availability of funds.* Program costs are projected to range from $6 million to $31 million for the 1981 crop. It is estimated that Commodity Credit Corporation (CCC) funds will be available for this purpose.

(e) *The perishability of the commodity.* It is hazardous to hold peanuts in dry storage through the hot

summer months because of danger of loss due to deterioration, insect infestation, or rodent damage. Shelled peanuts can be kept in cold storage for two years or more with little loss of weight or quality; however, the costs incurred would be prohibitive.

(f) *Importance of commodity to agriculture and the national economy.* Nationally, peanuts are a minor crop, representing about one percent of the total farm value of all U.S. crops. However, peanuts are an important crop in the major peanut producing States and are extremely important to the economies of areas within those States. In 1980, about 97 percent of U.S. peanuts were produced in the following States: Georgia (43%), Alabama (11%), Florida (5%), North Carolina (13%), Virginia (5%), Texas (12%), and Oklahoma (7%). The farm value of marketings from the 1981 crop is estimated at $846 to $963 million compared with estimates of $605 million for 1980 and $815 for the 1979 crop.

(g) *The ability to dispose of stocks acquired through price support operations.* There is an immediate dollar market for peanuts for crushing at competitive prices. For the 1981 crop, projections indicate that CCC could realize losses of $102 to $263 per ton on quota peanuts.

(h) *The need for offsetting temporary losses of export markets.* U.S. 1980–81 peanuts exports are projected to be down 245,000 tons from 1979–80 levels because of a decrease in U.S. supplies; however, strong world demand is forecast to continue, and U.S. exports could range from about 395,000 tons to 425,000 tons. If 1981–82 export demand is higher, or the supply of additional peanuts is lower than projected, surplus quota loan stocks will be available, at or above the quota loan rate plus costs, to make up the shortfall.

(i) *Ability and willingness of producers to keep supplies in line with demand.* A referendum will be held no later than December 15, 1980, to determine whether farmers favor or oppose marketing quotas for peanuts produced in calendar years 1981, 1982, and 1983. In a referendum held December 12 through 15, 1977, 93.6 percent of the growers voting approved marketing quotas and acreage allotments for peanuts produced in calendar years 1978, 1979, and 1980.

2. *The national level of support for 1981-crop additional peanuts.* Section 108(b) of the Act provides that the Secretary shall make price support available to producers through loans, purchases or other operations on "additional peanuts", which are defined in Section 358(p) of the Agricultural Adjustment Act of 1938, as amended, as any peanuts which are marketed from a farm and which are in excess of the marketings of quota peanuts from such farm for the marketing year but not in excess of the actual production from the farm acreage allotment. Section 108(b) of the Act further requires that the loan rate for 1981-crop additional peanuts shall be announced not later than February 15, 1981, and that in determining this rate, the Secretary shall take into consideration the following:

(a) *Demand for peanuts oil and meal.* Peanut crushings in 1980–81 are likely to fall below the 571 million pounds crushed last season. With the sharp drop in the crop, peanut supplies available for crushing will be greatly curtailed. But since peanut quality is poor, some supplies will be channeled into the crushing market. Peanut oil and meal are currently being quoted at about 50 cents per pound and $230 per ton, respectively. These prices are substantially above the 1979 levels of 28 cents per pound for oil and about $200 per ton for meal. Peanuts available for crushing in 1981–82 may increase slightly above the 1980–81 level but may remain substantially below the 1979 level. Peanut oil prices in 1981–82 are expected to range from 32 to 45 cents per pounds and meal at $255 per ton.

(b) *Expected prices of other vegetable oils and protein meals.* An 8 percent reduction in the 1980–81 world oilseed crop and expected higher feed grain prices should strengthen oilseed and oilseed product prices. However, substantially larger U.S. and world carrying stocks of oilseeds combined with a reduction in the rate of increase in the demand for soybean products, especially in the U.S., will temper price increases in 1980–81.

World aggregate 1980–81 production of oilseeds and related products is estimated at 177.5 million tons, with peanuts accounting for 10 percent of the total. Other major oilseeds include soybeans, accounting for 51 percent of aggregate production; cottonseed, 15 percent; sunflowerseed, 8 percent; and rapseed, 7 percent. Because of soybeans dominance in total supply of oilseeds and related products, they act as the leader in demand-supply price patterns for oilseeds generally. Soybean oil prices (crude, Decatur) during 1980–81 are expected to average slightly higher than the 1979–80 average of 25 cents per pound, possibly in the 25- to 30-cent range. Reduced soybean meal supplies are expected to rise sharply above the $180-per-ton average last year—possibly around $250 per ton.

(c) *Demand for peanuts in foreign markets.* The demand for U.S. peanuts in foreign markets is estimated to range from 395,000 tons to 425,00 tons in the 1981 marketing year. About 75 percent of U.S. exports may be purchased from additional peanut stocks with the remainder being purchased from quota stocks.

3. *Sales Policy.* The Department also invites comments on a sales policy for additonal peanuts received under loan or acquired under the 1981 program and sold for edible export use. Section 359(j) of the Agricultural Adjustment Act of 1938, as amended, provides that additional peanuts received under loan may be sold for domestic edible use at not less than all costs incurred with respect to the peanuts sold, plus (1) 100 percent of the quota loan value if sold and paid for during the harvest season upon delivery by the producer, or (2) 105 percent of the quota loan value if sold after delivery by the producer but not later than December 31 of the marketing year, or (3) 107 percent of the quota loan value if sold later than December 31 of the marketing year. In addition to these restrictions on sales of additional peanuts, Section 407 of the Act provides that when giving consideration to establishing sales policy, the Commodity Credit Corporation should give consideration to price, terms, and conditions which will not discourage or deter manufacturers, processors and dealers from acquiring and carrying normal inventories of the current crop. The Corporation shall not sell any basic agricultural commodity or storable nonbasic commodity at less than 5 percent above current support price for such commbdity, plus reasonable carrying charges. These restrictions do not apply to the sales of peanuts and oilseeds for the extraction of oil or sales for export.

Before making any determinations, consideration will be given to any relevant data, views, recommendations, or alternative proposals which are submitted in writing to the Director of the Price Support and Loan Division, ASCS–USDA.

All written submissions made pursuant to this notice will be made available for inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3741, South Building.

Signed at Washington, D.C. on December 18, 1980.

John E. Gibbs,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-40043 Filed 12-19-80 9:27am]

BILLING CODE 3410-05-M

7 CFR Part 1425

Cooperative Marketing Associations; Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) is considering amending the requirements governing cooperative marketing associations. The amendment would set forth procedure and criteria under which an approved cooperative could: (1) request a waiver from the member business requirement and (2) request a waiver to permit the cooperative to carry forward losses from eligible pools. This amendment also would clarify certain accounting requirements and delete the general waiver provision in 7 CFR 1425.13.

DATES: Written comments must be received on or before January 23, 1981 in order to be assured of consideration.

ADDRESS: Interested persons may send comments to Director, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Dale W. Wilson, Cooperative Section, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–5953. The Draft Impact Analyses describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above 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." Jerome F. Sitter, Director of the Price Support and Loan Division, has determined that the public comment period should be shortened to thirty (30) days in order that the cooperative affected by this proposed rule will have time to adjust their financial plans to handle losses. This action proposes to amend the regulations containing the eligibility requirements with which cooperative marketing associations must comply in order to participate in CCC price support programs. The proposed amendment would give the Executive Vice President, CCC, or his designee, authority to authorize a waiver with respect to certain requirements in the regulations which would permit an approved cooperative to acquire less than 80 percent of its commodity from members and to carry forward losses when it is determined that such authorization is appropriate under certain specified conditions. This amendment also proposes to clarify the intent of the regulations in terms of pooling, allocation of costs and expenses, and assessing losses. It would also delete the general waiver provision in § 1425.13.

Member Business Requirement

The current regulations provide at 7 CFR 1425.11 that in order to be approved for participation in CCC price support programs, cooperatives must acquire or receive not less than 80 percent of their eligible commodity from members. While the Executive Vice President, CCC, or his designee, can waive this requirement for a period of up to two years for a cooperative obtaining initial approval, the present regulations do not permit a waiver of the member business requirement for an approved cooperative. This requirement precludes an approved cooperative from requesting a waiver, when necessary, to meet emergency crop production conditions of its members. The proposed rule would permit an approved cooperative to Executive Vice President, CCC, or his designee, when it is determined that such authorization is necessary for the efficient operation of the cooperative and is in the best interest of its members. This authorization, if granted, permit a cooperative time in which to make the necessary adjustments in the percentage of the commodity acquired from members.

Carry Forward Losses

Approved cooperatives are not authorized under current regulations to carry forward losses from eligible pools and assess them against future pools. The rationale for this restriction is that participants in an eligible pool should receive the benefits of price support in direct proportion to the volume of each individual's participation in the pool. Carrying forward losses tends to break down this type of relationship, since membership and participation percentage may vary from one pool to the next.

This restriction, however, may not be conducive to the effective and efficient conduct of a cooperative's business. Some cooperatives' bylaws permit carry forward losses from one pool to the next, rather than requiring the allocation of losses to individual pool participants. This type of flexibility may permit a cooperative to maintain a more stable and reasonable financial structure by allowing a more rapid and orderly liquidation of losses. Also it reduces the necessity to allocate losses which might then have to be carried on the books of the cooperative for an indefinite period of time.

The rationale for maintaining this restriction, therefore, loses much of its force when members have authorized the cooperative to carry forward losses and pool participation and membership are reasonably stable. Accordingly, it is proposed the regulations be amended to permit the Executive Vice President, CCC, or his designee, to grant a waiver from this requirement on a year-by-year, case-by-case basis. Factors that would be considered in reviewing an application for a waiver would include (but not be limited to): (1) The stability of membership and participation between the affected pools; (2) the financial condition of the cooperative; and (3) whether the loss can reasonably be expected to be recovered from future earnings within a reasonable period of time.

Other Changes

The amendment would also clarify the intent of the regulations as they pertain to:

1. *Deferment of Proceeds.* The proposed change would specify that if any eligible commodity is delivered to the cooperative's eligible pool for marketing and the proceeds are withheld, then this commodity cannot be included in the eligible pool inventory until the proceeds have been distributed.

2. *Farm Storage.* The proposed change would specify that any eligible commodity stored on the farm could not be included in the eligible pool inventory until the commodity has been delivered to the cooperative.

3. *Allocation of Costs and Expenses.* The proposed change would add the phrase "in a pool" to clarify that each pool shall include only one crop delivered to the cooperative for marketing.

4. *Exception to Eligible Commodity and Pooling Provision.* The proposed change would delete the general waiver provision found in § 1425.13(g). Due to this amendment No. 3, the general waiver provision is no longer necessary or appropriate.

In compliance with Secretary's Memorandum No. 1955 and "Improving Government Regulations" (43 FR 50988), it is determined that initiation of review of these regulations contained in 7 CFR Part 1425 for need, currency, clarity, and effectiveness will not be proposed at this time. The public is invited to submit written comments on the proposals to the Director, Price Support and Loan Division, ASCS, P.O. Box 2415,

Washington, D.C. 20013. All written comments will be made available for public inspection at the Office of the Director, Room 3741 South Building during regular business hours (7 CFR 1.27(b)).

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 1425.11 be amended as follows:

1. Amending § 1425.11 to delete the words "applying for initial approval" and to change the word "that" to "than" in the second sentence. The revised § 1425.11 would read as follows:

§ 1425.11 Member Business.

If price support is sought for a particular crop of a commodity, not less than 80 percent of such crop of the commodity that is acquired by or delivered to the cooperative for marketing must be produced by its members or by members of its member cooperatives. However, the Executive Vice President, CCC, or his designee, may, for a period of two years or such lesser period of time as he determines appropriate, authorize a cooperative to acquire or receive for marketing from its members a smaller quantity of such crop than 80 percent, if that quantity has a value greater than the value of the quantity acquired or received from nonmembers for marketing and if the cooperative establishes to the satisfaction of the Executive Vice President, CCC, that such authorization is necessary for the efficient operation of the cooperative and is in the best interest of the members of the cooperative. Purchase of commodities from CCC and processed products from other processors or merchandisers shall not be considered in determining the volume of member and nonmember business.

2. Section 1425.13(c) of the regulations is amended by removing paragraph (g) and by revising paragraphs (c), (e) and (f) to read as follows:

§ 1425.13 Eligible Commodity and Pooling.

* * * * *

(c) *Pools.* The cooperative may establish separate pools as needed for quantities of a commodity acquired from members. If the cooperative obtains price support from CCC on any quantity of a commodity included in a pool, all of the commodity included in the pool must be eligible for price support, except that a part of a pooled commodity may be ineligible for price support because of grade or quality, or in the case of cotton, because of bale weight or being repacked, *Provided however,* That: (1) any commodity delivered to a cooperative by producer members who have not accepted a payment of the initial advances made available to them by the cooperative for the commodity under § 1425.14(a) shall not be included in the eligible pool until the advances have been paid, and (2) farm-stored commodities cannot be included in an eligible pool until they are physically delivered to the cooperative and deposited in an approved warehouse.

* * * * *

(e) *Allocation of costs and expenses.* If price support is obtained on any quantity of a crop of a commodity in a pool, allocations of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(f) *Losses.* (1) Any losses incurred by the cooperative in marketing a crop of a commodity on which price support is not obtained from CCC shall not be assessed against the proceeds of marketing of a crop of a commodity included in a pool on which price support was obtained. (2) Except as provided herein, losses incurred by the cooperative in marketing a crop of a commodity on which price support is obtained may not be carried forward and applied against subsequent eligible pools of a crop of a commodity on which price support is obtained. However, the Executive Vice President, CCC, or his designee, may grant a waiver from this requirement, and authorize an approved cooperative to carry forward losses incurred on an eligible pool for a crop of a commodity for a period of one fiscal year when CCC determines that such action will result in the equitable treatment of all members participating in a price support pool. These losses may only be assessed against the proceeds of a comparable eligible pool for the next year's crop of the commodity to the extent that proceeds from this pool are required for offsetting such losses. When proceeds from the eligible pool in the next fiscal year are insufficient to offset the previous year's losses on a comparable eligible pool, a cooperative may be authorized to carry forward the remaining amount to be offset against the proceeds of the following year's eligible pool. Factors which will be considered in authorizing a cooperative to carry forward losses include, but are not limited to, the following: (i) Stability of membership and participation between affected pools, (ii) the financial condition of the cooperative, and (iii) whether the loss can reasonably be expected to be recovered from future earnings that proceeds of such pool are required for offsetting such losses. When proceeds from the eligible pool in the next fiscal year are insufficient to offset the previous year's losses on a comparable eligible pool, a cooperative may be authorized to carry the remaining amount forward to be offset against the proceeds of the following year's eligible pool. Factors which will be considered in authorizing a cooperative to carry forward losses will include, but are not limited to, the following: (i) Eligibility of membership and participation between affected pools, (ii) the financial condition of the cooperative, and (iii) whether the loss can reasonably be expected to be recovered from future earnings.

5. Amending § 1425.13 to remove subsection (g).

§ 1425.13 Eligible Commodity and Pooling.

* * * * *

(g) *Exception.* [Removed]

(Secs. 4 and 5, Pub. L. 80-806 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 103, 105A, 107A, 201, 301, 401, Pub. L. 81-439 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444(f), 1444c, 1445b, 1446, 1447, 1421(a)))

Signed at Washington, D.C. on December 17, 1980.

Weldon B. Denny,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-40058 Filed 12-23-80; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 5

[Docket No. 80-21]

Rules, Policies, and Procedures for Corporate Activities

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (Office) is proposing to revise its fee schedules for processing various types of corporate applications and filings to recover the associated costs. Revision is required by increasing costs which are now in excess of income from present fees, most of which were established in 1970.

Increased fees are proposed for applications to: (1) Organize a national bank; (2) organize a national bank limited to trust powers; (3) convert a state chartered bank to a national bank; (4) establish domestic branches and seasonal agencies; (5) establish CBCT branches;(6) establish additional federal branches or a federal agency of a

foreign branch; (7) acquire domestic operating subsidiaries; and (8) undergo a corporate reorganization. Fees for certain applications for which there currently are no charges are also proposed. These include applications to: (1) Convert a branch or agency operated by a foreign bank or a commercial lending company controlled by a foreign bank into a federal branch or a federal agency; (2) change the location of a head office or domestic branch; (3) relocate a federal branch or federal agency of a foreign bank; (4) change a corporate title; and (5) establish a domestic operating subsidiary.

The new fees will apply to filings received by the Office after December 31, 1980. However, payment of charges above those of the current schedule will not be due until thirty days after final publication in the Federal Register of the new or revised fees.

DATES: Written comments should be received no later than February 23, 1981. It is not expected that the final schedule will be published before April 1, 1981. However, thirty days after its final publication, the schedule will be applied retroactively to all applications received by the Office after December 31, 1980.

ADDRESS: Comments should be directed to; Docket No. [80–21], Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East, SW., Washington, D.C. 20219, Attention: Marie Giblin, (202) 447–1800.

Comments will be available for inspection and photocopying.

FOR FURTHER INFORMATION CONTACT:

Darrel W. Dochow, Deputy Director, Bank Organization and Structure Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447–1184.

or

Jerome Edelstein, Attorney, legal Advisory Services Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447–1880.

SUPPLEMENTARY INFORMATION: The principal drafters of this document were Darrel W. Dochow, Deputy Director, Bank Organization and Structure Division, Office of the Comptroller of the Currency, (202) 447–1184; and Jerome Edelstein, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, (202) 447–1880.

The Comptroller of the Currency is considering amending the regulations governing fees levied on national banks and District of Columbia banks for processing various applications and filings as consolidated on October 15, 1980 (45 Fr 68586) in 12 CFR Part 5, §§ 5.20(e), 5.21(d), 5.22(c), 5.24(a)(3), 5.25(c), 5.30(d), 5.31(d), 5.32(c), 5.34(d), 5.40(d), 5.41(e), 5.42(c).

The proposed fee schedule is based on two principles. First, the Office seeks to recover the total costs to the Office associated with processing these filings. Second, in the interests of equity, the Office intends to establish a fee that reflects the typical cost of processing each type of application.

The Office has three main sources of income from banks: (1) Fees levied for trust examinations which by statute, 12 U.S.C. 482, may only recover expenses related thereto; (2) fees levied for processing corporate applications and filings; and (3) semiannual assessments levied pursuant to 12 U.S.C. 482. Because fees from trust examinations may be used only to recover their costs, the expense of processing corporate applications must come from another source. The Office believes that it is more equitable to place those processing costs on the parties filing the applications. Recovering those costs through the semiannual assessment would require that banks receiving only indirect benefit from the processing of such applications subsidize parties which receive direct benefit. For instance, in 1980, about 2,800 applications are expected to be submitted. Since the fees charged are inadequate to cover the costs of processing those applications, all 4,446 national banks will subsidize a protion of those expenses through their semiannual assessment.

The second principle in revising the fee schedule is that, in the interest of equity, each applicant should pay a fee approximating the cost of processing that particular type of application. It is not reasonable, for instance, to charge a bank filing for a name change, which requires relatively small processing costs, the same fee as that charged to applicants for national bank charters, which require relatively high processing costs. Similarly, it is not reasonable to charge a charter applicant who does not obtain preliminary approval the same amount as an applicant who does. There are numerous Office activities in the chartering process that take place between the granting of preliminary approval and the opening of the bank.

To achieve equity, the Office is proposing fees based on the type of application or filing, rather than on a calculation of the cost of processing individual filings. Recordkeeping costs under the latter method would increase the fees charged significantly. Moreover, the processing of certain types of filings are routine and significant variations in the cost of processing individual filings of the same type do not usually exist. In rare instances this is not the case, but the Office will not charge applicants for the cost of that additional processing. For charter applications, more extensive Office activity beyond the processing of the initial filing is usual and further fees are proposed to recover the cost of that additional processing. The Office will continue its present policy of imposing additional processing fees for some other types of applications where more extensive investigation is also commonplace. Those filings include applications for conversion and for acquisition of a domestic operating subsidiary.

The Office has not generally revised filing fees on a comprehensive basis since 1970. Since 1970 filing fees for two new types of corporate applications have been imposed. In 1977 a filing fee was established for processing each application for a CBCT branch, and in 1979 filing fees were set for the establishment of federal branches and federal agencies.

However, since 1970 the Office has incurred increasing expenses. The largest portion of this increase is attributable to general Federal Government pay increases. Between 1970 and 1979 the expense of salaries and benefits for the Bank Organization and Structure Division (BOSD), which processes most corporate applications, increased 76 percent. Salaries and benefits account for 84 percent of the total expenses of BOSD.

A second factor contributing to the increase in expense since 1970 was the loss in 1974 of rent-free space in government office buildings. A change in interpretation of a statute administered by the General Services Administration required the Office to vacate rent-free space within the main building of the Treasury Department. Consequently, total rental costs have become a significant portion of the Office budget.

A third factor, the general pressure of inflation, has also raised the nonsalary costs of this Office. Between 1970 and 1979 prices of all goods and services produced in this country have increased 81.15 percent as measured by the implicit gross national product deflator.

As a result of those increased expenses and inflationary pressures, the cost of processing corporate applications and filings bears little relation to the fees presently charged in most instances. In 1979 the aggregate cost of processing the applications and filings for which new or revised fees are proposed was $2,761,000, resulting in a shortfall to the Office of $1,465,000. In

1980 the projected aggregate cost is $3,585,000 and the projected shortfall is $1,968,000. In 1981 the projected aggregate cost is $3,952,000 and the projected shortfall is $2,334,000.

Currently, the Office is implementing revised and clarified policies and procedures as part of a commitment to simplify the regulatory process in the corporate and bank structure areas. All rules and procedures that are unnecessary in light of the current state of the industry or that lead to inefficiencies are being modified or eliminated. As the various stages of this review are completed, shorter processing times and less cumbersome procedures will result. Additionally, the Office is in the process of converting numerous manual recordkeeping functions to a computer-maintained data base. The Office anticipates that these activities will result in revision of fees for certain types of applications and filings in the future.

To take into account all of the varying factors, including inflation, increased salaries and economies undertaken, the Office intends to review corporate fees annually to keep them in line with processing costs. In the event that new corporate filings are required that will cause new expenditures, fees will be charged to recover the costs of those filings. The Office is also undertaking a review of other services it provides to identifiable parties by divisions other than BOSD to determine if fees for providing those services would be appropriate.

As stated, the projected aggregate cost in 1981 for processing the various types of filings with which this notice deals is $3,952,000. That includes a budget of $1,009,000 for BOSD which processes corporate filings in Washington; $1,300,000 in salary and benefits of regional personnel involved in processing corporate applications in the regions; $150,000 for special investigations by the regional staff in connection with applications for new charters; $325,000 for the portion of rent for the Washington office attributable to facilities used for processing corporate applications; $127,000 for the portion of supplies, furniture and equipment, etc., of the Washington office attributable to the processing of corporate applications; and $1,041,000 in expenses incurred by other Washington office divisions such as Legal Advisory Services, Multinational, Systems and Data Processing, and Customer and Community Programs, in contributing to the corporate filing process.

In calculating the proposed fees, the Office used as a starting point the projected aggregate cost for 1981. By applying the percentage of total time spent on each type of application during 1980 through June 30 to the aggregate 1981 cost base, the aggregate projected 1981 cost of processing each type of application was calculated. The average cost for each application was then calculated by dividing the projected number of applications of each type in 1980 into the total 1981 projected cost of processing each type.

The projected aggregate cost was taken from the budget, a carefully prepared document developed through a multi-stage process. Preparation of the budget begins in the spring of each year during which organizational units with the help of the budget staff draw up estimates of amounts to be requested. Those are then reviewed by the budget staff which draws up a consolidated budget. This consolidated budget is reviewed by a budget task force consisting of heads of operating divisions. The next stage of review is conducted by the Planning and Budget Review Committee consisting of division heads, some senior deputy comptrollers, and a representative of the Secretary of the Treasury.

The final review, prior to presentation to the Comptroller, is conducted by all senior deputy comptrollers, the chief counsel, and the senior advisor to the Comptroller. After approval by the Comptroller, the budget is subject to review by the Secretary of the Treasury. As an additional check on agency expenditures, the Office operates in accord with an employment ceiling established by the Office of Management and Budget. Detailed data on costs and time spent by the Office in processing corporate applications, which are the basis for the proposed fees, are on public file at the Office of the Comptroller of the Currency.

The following shows the differences between the current fee and the proposed fee for each type of application.

Chart listing changes in fees

Type	Present	Proposed
Organize National Bank:		
Filing fee	$2,500	$6,500
Processing after preliminary approval	(1)	6,500
Corporate reorganization	[2] 5,500	6,500
Organize National Bank Limited to Trust Powers:		
Filing fee	2,500	6,500
Processing after preliminary approval	0	6,500
Conversion:		
Filing fee	0	2,500
Investigation	(3)	(3)
Establishment of Domestic Branches and Seasonal Agencies:		
Filing fee	500	900
Establishment of CBCTs:		
Filing fee	200	900

Chart listing changes in fees—Continued

Type	Present	Proposed
Additional Federal Branch or Federal Agency of a Foreign Bank:		
Filing fee	500	3,000
Domestic Operating Subsidiaries:		
Filing fee	0	150
Investigation	([3] [4])	([3] [4])
Change in Location of a Head Office or Domestic Branch:		
Filing fee	0	500
Relocation of a Federal Branch or Federal Agency of a Foreign Bank:		
Filing fee	0	500
Change of Corporate Title:		
Filing fee	0	500
Application for Conversion of a Branch or Agency Operated by Foreign Bank or a Commercial Lending Company Controlled by a Foreign Bank into a Federal Agency:		
Filing fee	0	2,500
Investigation	0	(3)

[1] No fee except in unusual circumstances.
[2] This inclues $2,500 for processing the application to organize an interim national bank and $3,000 for processing the application of the two banks to merge.
[3] Rates set by 12 CFR § 8.6.
[4] For acquisition only.

The cost of processing each type of filing does not change whether a small or large bank is involved. As a result, there is no basis on which to justify a difference in the fee schedule depending on the size of the applicant bank. Further, it is the opinion of the Office that the fees, which are small in relation even to the assets of small banks, will not prevent such banks and organizing groups from making such corporate filings as needed.

The Office proposes that the new fee schedule apply to corporate applications received by the Office after December 31, 1980. This proposal is made because of the large deficits now incurred by the Office as a result of the cost of processing corporate applications. The Office expects that by charging the new fees throughout 1981 it will avoid a deficit in this area for the year which would necessitate passing those costs along to all banks through the semiannual assessment. Subsidization is the effect that OCC seeks to avoid through this proposal.

However, it is not anticipated that a final fee schedule will be published before April 1, 1981. Applicants whose filings are received by the Office after December 31, 1980 should pay pursuant to the current fee schedule until thirty days after final publication of the new fee schedule. At that time, they must pay the difference between the present fee schedule and the new one.

While the Office does not believe that the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553 (b), (c), and (d), apply to this change in the corporate fee schedule, the Office has determined to give notice and seek comment in an effort to keep

national banks fully informed of the changes in a timely and responsible manner and to ascertain the views of those affected by this proposal. Comments are particularly invited on the following questions:

a. Instead of placing the cost of processing corporate filings on applicants, should the cost be spread to all national banks through semiannual assessment fees?

b. If applicants are to bear the cost of processing corporate applications are there alternative ways to the method proposed to allocate such costs?

c. What is the effect of the proposed fees on small national banks?

d. What is the effect of applying the new schedule to filings received by the Office after December 31, 1980, but prior to final publication of the fees?

e. Will the increased fees prevent national banks from taking action which they otherwise would?

For the reasons set out in the preamble, the Office proposes the changes in Part 5 of Chapter I of Title 12 of the Code of Federal Regulations set forth below.

1. The authority citation for Part 5 reads as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. By revising § 5.20(e) to read as follows:

§ 5.20 Organization of a national bank

* * * * *

(e) *Fees.* An initial filing fee of $6,500 is required at the time of application for investigating, processing and deciding each "Application to Organize a National Bank". If preliminary approval is granted, an additional fee of $6,500 is assessed to process the various organizational documents and to verify that all requirements for the granting of a charter have been fulfilled.

* * * * *

3. By revising § 5.21(d) to read as follows:

§ 5.21 Organization of an interim national bank.

* * * * *

(d) *Fees.* A filing fee of $6,500 is required at the time of application for investigating, processing, and deciding each application. No further charge will be made for the subsequent merger or consolidation.

* * * * *

4. By revising § 5.22(c) to read as follows:

§ 5.22 Organization of a national bank limited to trust powers.

* * * * *

(c) *Fees.* A initial filing fee of $6,500 is required at the time of application for investigating, processing and deciding each application. if preliminary approval is granted, an additional fee of $6,500 is assessed to process the various organizational documents and to verify that all requirements for the granting of the charter have been fulfilled.

* * * * *

5. By revising § 5.24(a)(3) to read as follows:

§ 5.24 Conversion.

(a) * * *

(3) *Fees.* A initial filing fee of $2,500 is required at the time of application. An investigation and/or examination will normally be conducted and the applicant will be charged in accordance with 12 CFR 8.6.

* * * * *

6. By revising § 5.25(c) to read as follows:

§ 5.25 Application for conversion of a branch or agency operated by a foreign bank or a commercial lending company controlled by a foreign bank into a Federal branch or a Federal agency.

* * * * *

(c) *Fees.* A initial filing fee of $2,500 is required at the time of application. An investigation and/or examination will normally be conducted and the applicant will be charged in accordance with 12 CFR 8.6.

* * * * *

7. By revising § 5.30(d) to read as follows:

§ 5.30 Establishment of domestic branches and seasonal agencies.

* * * * *

(d) *Fee.* A filing fee of $900 is required at the time of application for processing each application.

* * * * *

8. By revising § 5.31(d) to read as follows:

§ 5.31 Establishment of customer-bank communication terminal (CBCT branches).

* * * * *

(d) *Fee.* A filing fee of $900 is required at the time of application for processing each application.

* * * * *

9. By revising § 5.32(c) to read as follows:

§ 5.32 Additional Federal branch or Federal agency of a foreign bank.

* * * * *

(c) *Fee.* A filing fee of $3,000 is required at the time of application for investigating and processing each application.

10. By revising § 5.34(d) to read as follows:

§ 5.34 Domestic operating subsidiaries.

* * * * *

(d) *Fees.* An initial filing fee of $150 is required at the time of application for processing an application to establish or acquire a domestic operating subsidiary. The cost of any examination into the condition of an operating subsidiary proposed to be acquired shall be paid by the applicant in accordance with 12 CFR 8.6.

* * * * *

11. By revising § 5.40(d) to read as follows:

§ 5.40 Change in location of a head office or domestic branch.

* * * * *

(d) *Fee.* A filing fee of $500 is required at the time of application for processing each application.

* * * * *

12. By revising § 5.41(e) to read as follows:

§ 5.41 Relocation of a Federal branch or Federal agency of a foreign bank.

* * * * *

(e) *Fee.* A filing fee of $500 is required at the time of application for processing an application.

* * * * *

13. By revising § 5.42(c) to read as follows:

§ 5.42 Change of corporate title.

* * * * *

(c) *Fee.* A filing fee of $500 is required at the time of application for processing an application.

* * * * *

Dated: December 18, 1980.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 80-40094 Filed 12-23-80; 8:45 am]

BILLING CODE 4810-33-M

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12 CFR Part 8

[Docket No. 80-20]

Assessment of Fees: National Banks; District of Columbia Banks

AGENCY: Comptroller of the Currency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (Office) is proposing to revise its trust examination fees to recover direct expenses and overhead expenses, as mandated by statute. Fees have been unchanged since 1969. Revision is necessitated by increased Office expenses for trust examinations. These expenses are most properly recovered from the banks subject to these specialized examinations. It is proposed that the new fee will apply to

trust examinations commenced after December 31, 1980, but no institution will be billed for those examinations until final publication of the revised fee. Payment will be due thirty days after final publication.

DATES: Comments must be received no later than February 23, 1981. A final rule is not expected to be published before April 1, 1981, and will be applied retroactively to all trust examinations begun after December 31, 1980.

ADDRESS: Comments should be directed to—Docket No. 80–20, Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, SW., 3rd Floor, Washington, D.C. 20219, ATTENTION: Marie Giblin (202) 447–1800.

Comments will be available for inspection and photocopying.

FOR FURTHER INFORMATION CONTACT:

David Nebhut, Financial Economist, Banking Research and Economic Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 447–1825, or

Jerome Edelstein, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, Washington, DC 20219 (202) 447–1880.

SUPPLEMENTARY INFORMATION: The principal drafters of this notice of proposed rulemaking are David Nebhut, Financial Economist, Banking Research and Economic Analysis Division, Office of the Comptroller of the Currency, (202) 447–1825, and Jerome Edelstein, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, (202) 447–1880.

The Office is considering amending that portion of 12 CFR Part 8 governing assessments for trust examinations of national banks, District of Columbia banks and trust companies, and Federal branches or agencies engaged solely in trust activities, and other entities for which the Office performs trust examinations. Authority for the Office to assess trust examination fees is based upon 12 U.S.C. 482 and 26 DC Code § 102.

Assessment of fees assuring coverage of all examination costs is required by statute. Title 12 U.S.C 482 provides in pertinent part:

> [A]ll national banks exercising fiduciary powers and all banks or trust companies in the District of Columbia exercising fiduciary powers shall be assessed by the Comptroller of the Currency for the examination of their fiduciary activities a fee adequate to cover the expense thereof.

To assure continued compliance with that statutory requirement, the Office is proposing to assess the 1,700 national banks and other entities with active trust departments for the total direct and overhead expenses of such examinations rather than spreading overhead costs properly attributable to trust examinations among all 4,446 national banks and District of Columbia banks including those which do not exercise trust powers. To achieve this objective, the Office, pursuant to 12 U.S.C. 482, is proposing to assess each bank an hourly fee which approximates the hourly cost of examining the bank's trust activities. As is the current practice, banks will be charged according to the number of hours an examiner spends in the bank conducting the examination. To assure that trust revenues continue to recover trust examination expenses, that hourly fee will be revised annually to reflect changes in such expenses.

The changes in the assessment are required by increases in Office expenses since the current trust examination fees were adopted in 1969. The largest portion of that increase is attributable to general Federal Government pay increases. The per person expense of salaries and benefits for the entire Office increased 116 percent between 1969 and 1979. During that same period, the total number of employees increased 43 percent. Salaries and benefits account for 71 percent of the total expenses of this Office. Employment of trust examiners increased at a faster rate than total Office employment. Although the increase in per person trust examiner's salaries and benefits has risen more slowly than the per person increase for the entire Office, total trust operation costs have risen substantially.

The pronounced increase in employment is attributable to recovery from understaffing in the late 1960s and the demands imposed by the increasing complexity of performing trust examinations. Trust examinations are more complex than in 1969 because of the enactment of the Employee Retirement Income Security Act (ERISA) in 1974, the Securities Acts Amendments of 1975, and various consumer laws in the 1970s which are enforced by trust examiners. The examiner's task has also been complicated by changes in interpretation by the Office of the prudent man rule which require examiners to make much more thorough analyses of certain types of investments that previously were regarded as per se violations of the rule. Changes in Office procedure which require examiners to evaluate management rather than deal with the minutiae of possible errors or misjudgments in the administration of each fiduciary account also have made the examiner's task more difficult. Additionally, trust assets subject to examinations by this Office doubled between 1969 and 1979, rising from $144.5 billion to $289.7 billion.

A second factor contributing to the increase in expenses since 1969 was the loss in 1974 of rent-free space in government office buildings. A change in interpretation of a statute administered by the General Services Administration required the Office to vacate rent-free space within the main building of the Treasury Department. Consequently, total rental costs have become significant.

A third factor, the general pressure of inflation, has also raised the nonsalary costs of this Office. Between 1969 and 1979, prices of all goods and services produced in this country have increased 91 percent as measured by the implicit gross national product deflator.

As a result, total expenses related to trust examinations in 1978 exceeded revenues by 92 percent, and in 1979 by 129 percent. In 1980, expenses are projected to exceed revenues by 128 percent.

The following table compares total expenses related to trust examinations in 1978 and 1979 and projected total trust examination expenses in 1980 and 1981 with revenues derived from assessments of trust examination fees in 1978 and 1979 and projected revenues in 1980 and 1981 based on currently applicable fees.

Table 1

Year	Expenses	Revenues
1978	$5,591,856	$2,907,000
1979	6,924,148	3,017,000
1980	[1] 7,139,402	[1] 3,125,000
1981	[1] 8,159,475	[1] 3,239,000

[1] Projected.

Total expenses of trust examinations include direct and overhead expenses. The direct expenses of an examination include trust examiners' salaries and benefits and travel costs. The overhead expenses of an examination include:

(1) Regional office overhead expenses related to trust examinations. They are calculated by applying the ratio of the number of field trust examiners to total field examiners to Regional office overhead expenses.

(2) Expenses of Washington operations and administrative functions which are related to trust examinations. Examples of these functions are data processing, accounting and planning, supplies, printing services, and mail and messenger services. Those expenses are calculated by determining the ratio of the number of trust positions to total

Office positions and applying that ratio to administrative expenses incurred by the operations and administrative units under the supervision of the Senior Deputy Comptroller for Operations.

(3) Expenses incurred by the Washington office Trust Examination Division which supervises the field examinations and expenses incurred by the Deputy Comptroller for Specialized Examinations in performing his function as supervisor of the Washington Trust Examination Division. The latter amount is 50 percent of the Deputy Comptroller's total expenses.

(4) Rental expenses for the Washington office. Those are determined by calculating a ratio of Washington trust personnel to total Washington personnel and applying that ratio to total Washington rent.

The following table shows those direct and overhead expenses for 1978 and 1979 (the latest complete figures), projected expenses for 1980 based on the most recently available data, and projected expenses for 1981 based on the 1981 budget.

Table 2

	1978	1979	1980	1981
(1) Direct expenses (2) + (3)	3,715,702	4,457,811	4,611,814	5,247,100
(2) Salaries and benefits	2,813,541	3,489,815	3,520,198	3,991,700
(3) Travel expenses	902,161	967,996	1,091,616	1,255,400
(4) Overhead expenses (5) + (6)	1,876,154	2,466,337	2,527,588	2,912,075
(5) Regional offices	1,147,911	1,527,827	1,459,169	1,615,686
(6) Washington office (7) + (8) + (9)	728,243	938,510	1,068,419	1,296,389
(7) Operations and administration	425,630	569,082	661,698	785,292
(8) Trust examinations division	255,883	277,202	333,264	432,684
(9) Rent	46,730	72,226	73,457	78,413
(10) Total expenses related to trust examinations (1) + (4)	5,591,856	6,924,148	7,139,402	8,159,175

To assure that revenues derived from the trust examination assessment recover trust-related expenses, the Office proposes to base its fee in a given year on the projected budget for trust examinations for that year. The hourly fee for a given year will be calculated by dividing trust examination expenses projected in the budget for that year by the projected number of on-site billable trust examination hours in that year.

The budget is a carefully prepared document developed through a multi-stage process. Preparation of the budget begins in the spring of each year during which organizational units with the help of the budget staff draw up estimates of amounts to be requested. Those are then reviewed by the budget staff which then draws up a consolidated budget. This consolidated budget is reviewed by a budget task force consisting of heads of operating divisions. The next stage of review is conducted by the Planning and Budget Review Committee consisting of division heads, some senior deputy comptrollers, and a representative of the Secretary of the Treasury. The final review, prior to presentation to the Comptroller, is conducted by all senior deputy comptrollers, the chief counsel, and the senior advisor to the Comptroller. After approval by the Comptroller, the budget is subject to review by the Secretary of the Treasury. Further, the Office operates in accord with an employment ceiling established by the Office of Management and Budget.

Billable hours are projected based on historical growth in on-site examination hours. This growth has averaged 3.6 percent since 1976. The Office intends to recalculate that growth rate annually to assure that the projected number of hours takes into account current trends.

The hourly fee for 1981, under those procedures, is $32.44. Because the proposed fee is based on projections as to expenses and billable hours, there is not absolute certainty that it will equal hourly expenses. Had the proposed method of calculating the hourly fee been in effect in past years, the hourly charge would have been $26.73 in 1978, $27.81 in 1979, and $28.48 in 1980. Actual hourly costs of examination were $2.03 higher than projected cost in 1978, $1.76 lower in 1979, and are now projected to be 94 cents lower in 1980. For the three-year period, this would have resulted in an aggregate undercharge of 67 cents per hour. Further, the Office expects the observed decline in the discrepancy between projected and actual expenses per hour to continue due to improved monitoring of time utilization.

The new fee differs from the current schedule—$140 per day for the examiner in charge and $80 per day for each of the assisting personnel—because it established only one hourly rate. The Office believes the proposed schedule is an improvement since the designation of an examiner, and consequently the rate at which that examiner's time is billed, can vary from job to job.

An alternative is to tie the charge for each examiner to his or her salary level. However, if the relationship between the salary level of an examiner and the time it takes to complete an examination is not exact, the fee charged will not reflect the true cost of the examination. Consequently, the Office believes that the flat hourly fee proposed represents an equitable method of approximating the cost of each examination, and enables the Office to avoid setting charges based on arbitrary determinations about the time it takes each examiner to complete an examination.

Because a fee adequate to cover the expense of examinations is required by statute, small banks cannot be treated differently from large banks in the establishment of the hourly charge. However, since the total fee to each bank is dependent on the number of hours spent on the examination and since examinations of smaller banks generally take less time than those of large banks, it is expected that assessments for smaller banks will be less than for large banks. Further, under the proposed fee, the average hourly rate will not vary depending on the number of examiners conducting the examination. Under the current schedule, small banks are paying a higher average hourly rate than large banks because the time of the examiner in charge, billed at the higher rate, is a greater proportion of total billed hours.

The Office proposes that the new fee apply to trust examinations begun after December 31, 1980. This proposal is made because of the large deficits being incurred by the office as a result of the cost of trust examinations. The Office expects that by imposing the proposed assessment throughout 1981 it will avoid a deficit in this area for the year, and this will avoid having to pass that deficit along to all national banks through the semiannual assessment. That subsidization is the effect that the Office, pursuant to 12 U.S.C. 482, seeks to avoid through the implementation of this proposal.

However, it is not anticipated that a revised fee will be published before April 1, 1981. As a result, banks undergoing trust examinations begun after December 31, 1980, will not be billed for those examinations until the revised fee is published. Payment will be due thirty days after final publication.

While the Office does not believe that the notice and comment provisions of the Administrative Procedure Act, 5. U.S.C. 553 (b), (c), and (d), apply to this change in the trust examination fee, the Office has determined to give notice and seek comment in a manner that is consistent with those statutory provisions in an effort to keep national banks fully informed of the change in a timely and responsible manner and to ascertain the views of those affected by this proposal.

Comments are particularly invited on the following:

(1) Alternative methods to that proposed for determining the costs to the Office of conducting trust examinations;

(2) Whether the degree of accuracy shown between projected hourly expenses and actual hourly expenses is acceptable or whether the Office should compensate for error through surcharges or rebates when actual expenses are known;

(3) The effect of applying the revised fee to trust examinations begun after December 31, 1980, but prior to publication of the final rule.

For the reasons set out in the preamble, Part 8 of Chapter I of Title 12 of the Code of Federal Regulations is proposed to be revised as set forth below:

The authority citation for Part 8 is revised to read as follow:

Authority: R.S. 5240, as amended, 12 U.S.C. 482, 12 U.S.C. 3102, and in Section 3, 47 Stat. 1566, 26 D.C. Code 102.

Section 8.7 is revised to read as follows:

§ 8.7 Hourly rate for trust examinations.

(a) The assessments contained in this subpart are made pursuant to authority contained in R.S. 5240, as amended, 12 U.S.C. 482 and in section 3, 47 Stat. 1566, 26 D.C. Code 102. These statutes provide that the Comptroller assess fees adequate to cover the cost of each trust examination.

(b) To assure continued compliance with the statutory requirement, national banks and other entities with trust departments examined by this Office will be assessed a fee recovering the total direct and overhead expenses of the examination. This fee will be revised annually according to the method set forth in paragraph (d) of this section to reflect changes in such expenses.

(c) The hourly fee for trust examinations commenced after December 31, 1980, is $32.44. The total fee for a trust examination is the hourly fee multiplied by the number of hours examiners spend on site in performing the trust examination.

(d) The hourly rate set forth in paragraph (c) of this section represents the total expenses of conducting trust examinations as set forth in the budget for the year in which the hourly fee is applicable divided by the projected number of billable hours for that year.

(1) Total expenses of trust examinations include direct expenses and overhead expenses.

(i) Direct expenses of the examination include travel expenses and trust examiners' salaries and benefits.

(ii) Overhead expenses include:

(A) Regional office overhead expenses related to trust examinations. Those are calculated by determining the ratio of the number of field trust examiners to total field examiners and applying it to total budgeted Regional office overhead expenses.

(B) Expenses of Washington, D.C. operations and administrative functions which are related to trust examinations. Those are calculated by determining the ratio of the number of trust positions to total Office positions and applying it to administrative expenses budgeted for the operations and administrative units under the supervision of the Senior Deputy Comptroller for Operations.

(C) Expenses budgeted for the Washington Office Trust Examination Division, which supervises the field examination, and 50 percent of the expenses budgeted for the Deputy Comptroller for Specialized Examinations, who supervises the Washington Office Trust Examination Division, among other functions.

(D) Rental expenses for the Washington Office related to trust examinations. Those are determined by calculating the ratio of Washington Office trust personnel to total Washington Office personnel and applying the ratio to total budgeted Washington rent.

(2) Projected number of billable hours is the total number of hours projected to be spent by trust department examiners at on-site examinations during the year for which the hourly fee is being set. That is determined by adjusting the number of hours according to the average annual increase in billable hours since 1976. This growth rate will be reviewed annually to take into account current trends.

Dated: December 18, 1980.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 80-40095 Filed 12-23-80; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 80-802]

Service Corporation Activity

Dated: December 15, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed regulation.

SUMMARY: The Board has proposed amendments to its regulation governing the service corporation investments of Federal associations. The proposed amendment would expand the list of activities in which service corporations may engage without prior Board approval, conform the service corporation regulation to recent amendments to the Board's net worth requirements and recent internal agency organizational changes, eliminate the separate limit for unsecured indebtedness for service corporations controlled by fewer than five savings and loan associations, eliminate the notification requirement for certain land development activities, delegate extension of time limits on the construction of improvements to the Board's Principal Supervisory Agent, and simplify the regulation in certain respects. The proposed amendments are intended to provide increased flexibility in associations' service corporation activities.

DATE: Comments must be received by: February 15, 1981.

ADDRESS: Send comments to Information Services, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION, CONTACT: Peter M. Barnett, Office of General Counsel, at the above address, telephone (202) 377-6445.

SUPPLEMENTARY INFORMATION: Since first authorized by a 1964 amendment to Section 5(c) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(c)), the investment of Federal associations in service corporations has developed gradually. While the Board initially took a narrow view of appropriate activities for service corporations, the present policy of approving activities reasonably related to the activities of Federal associations has evolved as the experience of the industry and the Board with service corporations has increased. Service corporations have become vehicles for associations to innovate and experiment in providing needed services to the

public and associations and to make low and moderate-income housing available.

The Depository Institutions Deregulation and Monetary Control Act of 1980 (the "Act"), Pub. L. No. 96–221, 94 Stat. 132, expanded the authority of Federal savings and loan associations to act as full-service financial centers for their customers. The Act authorized associations to offer negotiable order of withdrawal accounts, liberalized existing authority of associations to make residential and commercial real estate loans, authorized consumer loan, commercial paper and corporate debt investments, and authorized the providing of trust services.

Since associations often implement new investment authority and make investments and provide services related to association activities through their service corporations, the expanded authority for Federal associations under the Act created a need for a corresponding expansion of service corporation authority. In particular, associations may desire to implement the new trust powers authority through their service corporations rather than through the parent. In addition, the expansion of the commercial real estate loan authority of associations created a need for corresponding commercial real estate development and management authority in service corporations.

The Act also increased the amount that a Federal association may invest in the capital stock, obligations or other securities of service corporations from one to three percent of association assets. A Federal association investing in service corporations to the full extent permitted by the Act must allocate one percent of assets to investments that serve community, inner city or community development purposes. The Board already has implemented this increase in the amount that a Federal association may invest in its service corporations (Board Resolution No. 80–488; August 15, 1980; 45 FR 56029).

In order to encourage use of the authority to invest in community development projects and to permit flexibility in selecting qualified investments, the Board adopted broad standards to determine whether an investment qualifies as having a community development purpose. These include investments in governmentally sponsored programs for housing, small farms or businesses that are local in character; investments for the preservation or revitalization of either urban or rural communities; investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; and investments approved by the Board's Principal Supervisory Agent (i.e., the president of the Federal Home Loan Bank of which the association investing in the service corporation is a member) on a case-by-case basis. The Board believes that the proposed expansion of the list of service corporation activities permitted without prior Board approval would facilitate use of the community development investment authority.

Lastly, changing economic conditions, increased competition with other financial service providers, and increased demand for mortgage funds have required associations to seek innovative means of securing lendable funds, providing services and utilizing secondary mortgage market resources. Because of the entrepreneurial risk associated with new ventures, possible tax consequences and other considerations, such innovations often are better performed by service corporations rather than associations.

In recognition of the expanded investment authority of associations in service corporations and the continuing need for experimentation and innovation, the Board proposes to revise its regulation governing association investment in service corporations. The proposal would expand the list of activities in which service corporations may engage without prior Board approval, conform the service corporation regulation to recent regulatory changes in net worth requirements and recent internal agency organizational changes, eliminate the separate limit for unsecured indebtedness for service corporations controlled by fewer than five savings and loan associations, eliminate the notification requirement for certain land development activities, delegate extension of time limits on the construction of improvements to the Board's Principal Supervisory Agent, and simplify the regulation in certain respects.

In revising the list of activities in which service corporations may engage without prior Board approval, currently set out at 12 CFR 545.9–1(b)(4), the Board examined activities that have been approved consistently for service corporations upon application to the Board, newly authorized activities for Federal associations, and the present needs of the residential mortgage market. On the basis of its review, the Board proposes to permit service corporations of Federal associations to engage in the following additional activities without prior Board approval:

- Dealing in loans secured by junior liens on mobile homes;
- Acquiring, developing and constructing improvements on real estate for commercial purposes, subject to the same conditions imposed on such activities for residential purposes;
- Management of owners' associations for condominium, cooperative, Planned Unit Development and commercial projects;
- Providing residential and commercial property management services for third parties;
- Providing real estate brokerage services for property owned by the parent association, the service corporation or a joint venture in which the service corporation participates, but not by third parties;
- Executing and delivering conveyances, reconveyances and transfers of title;
- Providing homeownership and financial counseling;
- Issuance of mortgage-backed securities;
- Investment in tax-exempt bonds issued by a state or local governmental authority to finance housing;
- Providing liquidity management, investment and advisory services to savings and loan associations;
- Providing clerical, accounting, data processing and internal auditing services to financial institutions;
- Providing trust services upon application to the Board pursuant to, and subject to the conditions provided in, the regulations governing trust services for Federal associations;
- Engaging in mortgage-futures transactions to the extent such transactions hedge existing or planned forward commitments.

At present, the Board does not permit service corporations of Federal associations to engage in commercial real estate development except where such activity is incidental to a residential purpose. The proposal would authorize service corporations to acquire, develop and construct improvements on real estate for commercial purposes subject to the same conditions imposed on residential real estate activities. This includes completion of construction of improvements within three years after commencement of development and within five years after acquisition of the real estate. However, the proposal would delegate extension of the three- and five-year periods to the Board's Principal Supervisory Agent (i.e., the president of the Federal Home Loan Bank of which the Federal association investing in the service corporation is a member). Additionally, the proposal would eliminate the requirement that a service corporation notify the Board's

District Director-Examinations if the cost of land development activities exceeds 20 percent of the service corporation's assets.

By Resolution No. 80–738 (November 26, 1980), the Board adopted final regulations implementing the new statutory authority of Federal associations to provide trust services. These regulations (12 CFR 550.1–550.16) permit a Federal association to provide trust services either through a trust department or a service corporation upon application to the Board. This proposal would incorporate the authority to provide trust services through a service corporation upon application to the Board pursuant to, and subject to the conditions provided in, the regulations governing trust powers.

Approval of service corporation investment in tax-exempt bonds issued by a state or local governmental authority to finance housing would include obligations of state governments and political subdivisions thereof used to finance residential real property for family units and issued pursuant to section 103 of the Internal Revenue Code, and obligations of public housing agencies to finance housing projects with rental assistance subsidies issued pursuant to section 11(b) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437i).

The proposal would amend the limits for indebtedness of service corporations controlled by fewer than five savings and loan associations. The present regulation limits consolidated unsecured debt of 2 times consolidated net worth and unsecured debt to holders of at least 25 percent of the service corporation's capital stock, and limits consolidated secured and unsecured debt to 10 times that factor. The proposal would eliminate the separate limit for unsecured debt.

The proposal also would conform the references in subparagraphs (d)(2) and (4) of § 545.9–1 to recent changes in the net-worth requirements for Federal associations (12 CFR 563.13) and recent internal agency organizational changes. Recent Board action (Board Resolution No. 80–694; November 6, 1980) amended the net-worth requirements for insured institutions, in part, by replacing the current net-worth requirement of 5 percent of withdrawable accounts plus 5 percent of secured borrowings with a requirement of 4% of liabilities plus an amount equal to 20 percent of the association's scheduled items. In addition, applications for exceptions from the scheduled items limitation of subparagraph (d)(2) are now reviewed by the Board's Office of Examinations and Supervision. The proposal would conform 12 CFR 545.9–1 by cross referencing 12 CFR 563.13 and directing that copies of applications for exceptions be sent to the Director, Office of Examinations and Supervision.

Lastly, the proposal would make certain oganizational changes in the regulation to facilitiate understanding.

In addition to the amendments contained in the proposal, the Board would like to solicit comments on whether the service corporations of Federal associations should be authorized to operate and manage money market mutual funds. The Board is interested particularly in determining whether such authority would enhance the ability of associations to attract lendable funds and under what conditions the benefits to be realized from such activity would be maximized.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 545, Subchapter C, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PARTS 545—OPERATIONS

1. Revise paragraphs (b) and (c) of § 545.9–1 to read as follows:

§ 545.9–11 Service Corporations.

* * * * *

(b) *Qualified service corporations.* A Federal association may invest in the capital stock, obligations, or other securities of the following types of service corporations organized under the laws of the State (including District, Commonwealth, territory or possession) in which the association's home office is located:

(1) A statewide service corporation in which:

(i) All of the capital stock is available for purchase by, and only by, any and all savings and loan associations with a home office in such State, and the capital stock is owned by more than one association;

(ii) No savings and loan association owns, or may own, more that 10 percent of the service corporation's outstanding capital stock, except that in any State in which the home offices of fewer than 15 savings and loan associations are located, no association owns, or may own, more than one-third of such stock;

(iii) Every eligible savings and loan association may own an equal amount of capital stock or may, on such uniform basis as the service corporation may determine, own an amount of such stock equal to a stated percentage of its assets or savings capital at the time the stock is purchased, but capital stock outstanding on December 31, 1964, may be disregarded in determining compliance with this requirement; and

(iv) Substantially all of the service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist of one or more of the activities set forth in paragraph (c) of this section:

(2) A multi-owned service corporation in which:

(i) All of the capital stock is held by at least five savings and loan associations, and no one association holds more than 40 percent of such stock; and

(ii) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities set forth in paragraph (c) of this section; or

(3) A solely owned or multi-owned service corporation in which:

(i) All of the capital stock is held by fewer than five savings and loan associations or more than 40 percent of such stock is held by one savings and loan association;

(ii) The consolidated debt outstanding at any one time (to holders of its capital stock and to others) of the service corporation and any subsidiary, and the debt outstanding at any one time of each subsidiary of the service corporation, does not exceed:

(A) Ten times the total of its consolidated net worth and unsecured debt to holders of at least 25 percent of its capaital stock; or

(B) Twenty times such total if the service corporation is engaged solely in the activities set forth in subparagraph (c)(1)(i) of this section.

A debt shall be deemed unsecured for purposes of this subparagraph (b)(3) to the extent that it exceeds the value of security therefor at the time the loan is made. The term "secured debt" as used in this subparagraph (b)(3) shall include the entire amount of any obligation of the service corporation resulting from the sale of consumer loans with recourse;

(iii) Approval of the Board is obtained before any activity of the service corporation is performed through one or more joint ventures if a director, officer, or controlling person of any stockholder of the service corporation has a direct or indirect beneficial interest in the joint venture;

(iv) Approval of the Board is obtained for any investment by:

(A) A Federal association in a service corporation or in a corporation which will become a service corporation as a result of that investment, or

(B) A service corporation directly or indirectly through one or more of its wholly-owned subsidiaries or joint ventures,

if the purpose of the investment is to acquire a going business for an amount exceeding the fair market value of the tangible net assets of that business from a director or officer of a Federal association which owns any of the capital stock of the service corporation or from an entity in which a director or officer of the Federal association has a direct or indirect beneficial interest or is a director, officer, controlling person, partner, or trustee;

(v) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities set forth in paragraph (c) of this section.

(c) *Permitted activities.* A service corporation in which a Federal association may invest is permitted to engage in the following activities:

(1) Originating, purchasing, selling and servicing, any of the following:

(i) Loans, and participations in loans, on a prudent basis and secured by real estate or liens on mobile homes, including brokerage and warehousing of such loans;

(ii) Loans, with or without security, for altering, repairing, improving, equipping, or furnishing residential real estate;

(iii) Educational loans;

(iv) Consumer loans;

(2) Performing the following services primarily for savings and loan associations, their borrowers and accountholders:

(i) maintaining and managing residential or commercial real estate;

(ii) managing owners' associations for condominium, cooperative, Planned Unit Development and commercial office park projects;

(iii) executing and delivering conveyances, reconveyances, and transfers of title;

(iv) homeownership and financial counseling;

(v) preparing state and Federal tax returns, but not for an accountholder or borrower which is a corporation operated for profit;

(vi) insurance brokerage or agency for liability, casualty, automobile, life, health, accident and title insurance, but not private mortgage insurance;

(vii) providing fiduciary services upon application to the Board pursuant to § 550.2, and subject to the conditions provided in §§ 550.1–550.16, of this Subchapter;

(3) Performing the following services, primarily for savings and loan asociations:

(i) Credit analysis, appraising, construction loan inspection, and abstracting;

(ii) Developing and administering personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(iii) Research, studies, and surveys;

(iv) Purchasing office supplies, furniture, and equipment;

(v) Developing and operating storage facilities for microfilm or other duplicate records;

(vi) Advertising, brokerage and other services to procure and retain both savings accounts and loans;

(vii) Serving as escrow agent or as trustee under deeds of trust;

(viii) Providing liquidity management, investment and advisory services;

(4) Providing clerical, accounting, data processing and internal auditing services to any financial institution;

(5) Providing real estate brokerage services for property owned by a stockholder of the service corporation, the service corporation, or a joint venture in which the service corporation participates, but not by third parties;

(6) Acquiring unimproved real estate for prompt development and/or subdivision for construction of residential or commercial improvements, or for resale to others for such construction, or for use as mobile home sites;

(7) Developing, subdividing, and constructing improvements for sale or rental on real estate referred to in subparagraph (6) of this paragraph (c). However, such development, subdivision, and construction of improvements just be completed within three years after commencement of development of the real estate and within five years after acquisition of the real estate, unless such period is subsequently extended by the Principal Supervisory Agent (as defined in § 545.14(a)(3) of this Chapter) upon written application by the service corporation. The application shall be supported by information evidencing that the service corporation has proceeded in accordance with a prudent development plan and has not caused undue delay in the completion of construction. Acquisition of an option to purchase is not an acquisition for the purpose of determining the periods provided for in this subparagraph;

(8) Acquiring improved residential or commercial real estate or mobile homes to be held for rental;

(9) Acquiring improved residential or commercial real estate for remodeling, renovating, or demolishing and rebuilding for sale or rental;

(10) Acquiring, maintaining and managing real estate (improved or unimproved) to be used for offices and related facilities of a stockholder of the service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is performed under a prudent program of property acquisition to meet either the stockholder's present needs or reasonable future needs for office and related facilities. However, without prior approval of the Board, no service corporation shall acquire such real estate if, as a result of the acquisition, the outstanding aggregate book value of all such real estate owned by the stockholder and its service corporations would exceed their consolidated net worth;

(11) Making investments specified in §§ 545.9 and 545.9–3 of this Subchapter;

(12) Investing in savings accounts in an insured institution which is a stockholder of the service corporation, if the service corporation receives no consideration, other than interest at the current market rate, for opening or maintaining any such account;

(13) Engaging in mortgage-futures transactions, provided that such transactions are matched directly against the service corporation's firm commitments, or against anticipated reinvestment in mortgages and mortgage-related securities of its expected mortgage repayments over the forthcoming 12-month period. The terms "firm commitment," "mortgage-futures transaction," "mortgage-related security" and "mortgage repayment" shall have the meanings provided in § 545.29 of this Part. Such matching need not include matching of maturities;

(14) Investing in tax exempt bonds issued by a state or local governmental authority to finance housing;

(15) Issuing mortgage-backed securities;

(16) Issuing credit cards, extending credit in connection therewith, and otherwise engaging in or participating in credit card operations;

(17) Activities reasonably incident to those listed in paragraphs (c)(1)–(16) of this section;

(18) Such other activities reasonably related to the activities of Federal associations as the Board may approve.

2. Amend the first clause of subparagraph (d)(2) and the first and third sentences of subparagraph (d)(4) of § 545.9–1 to read as follows:

(d) *Amount of investment.*

* * * * *

(2) In addition to amounts which it may invest under subparagraph (d)(1) of

this section, an association that has a net worth at least equal to the minimum net-worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in paragraph (b) of § 563.13 of this Chapter, and that has a ratio of scheduled items (other than assets acquired in a merger instituted for supervisory reasons) to specified assets of not more than 2.5 percent (except as provided in subparagraph (d)(4) of this section), may loan additional amounts as follows:

* * * * *

(4) An association that has a net worth at least equal to the minimum net worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in paragraph (b) of § 563.13 of this Chapter, may apply to the Board for an exception from the scheduled-items limitation in paragraph (d)(2) of this section * * * The application shall be filed with the Principal Supervisory Agent with a copy to the Director, Office of Examinations and Supervision. * * *

* * * * *

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-40153 Filed 12-23-80; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Improving Government Regulations; Semi-Annual Agenda of Regulations

AGENCY: National Credit Union Administration.

ACTION: Publication of Semi-Annual Agenda of Regulations.

SUMMARY: Pursuant to Executive Order No. 12044: Improving Government Regulations, NCUA is publishing a list of regulations under consideration by NCUA as of December 5, 1980.

DATE: Effective December 5, 1980.

ADDRESS: National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: (a) On the Executive Order or the Agenda, Robert Monheit, Senior Attorney/Regulatory Development Coordinator, Office of General Counsel, National Credit Union Administration at the above address. Telephone: (202) 357–1030. (b) On a particular regulation, contact the person named in the listing for that regulation at the above address.

SUPPLEMENTARY INFORMATION: On March 23, 1978, Executive Order No. 12044 was issued, directing each executive agency to publish a report on procedures to improve government regulations. The Executive Order also directed each agency to publish, twice a year, a list of significant regulations being considered, along with a description of the regulation, its need and legal basis, its status, the name and telephone number of an agency official familiar with the regulation and whether a regulatory analysis is required for that regulation. On May 31, 1978, NCUA published its draft report for public comment (43 FR 23688); NCUA's final report was published on March 23, 1979 (44 FR 17954).

The first Semi-Annual Agenda was published on December 15, 1978 (43 FR 58654). Twelve regulations were listed as being under development (from the stage of preliminary review through the issuance of a final regulation). In addition, the first Agenda listed twenty existing regulations to be reviewed in the future, set forth a brief description of the aim of the review, and gave the name of an agency official to contact for further information.

The second Semi-Annual Agenda was published on July 2, 1979 (44 FR 38560). Nineteen regulations were listed as being under development. (Those regulations listed in the first Agenda as having been issued in final form were not listed in the second Agenda.) The list of existing regulations to be reviewed was divided into two categories. The first ("Regulations Reviewed") contained a list of nine regulations where substantial progress had been made in the review process (from preliminary review through the issuance of a final, revised, regulation). The second group ("Regulations to be Reviewed") listed eleven regulations yet to e reviewed.

The third Semi-Annual Agenda was published on December 19, 1979. Seventeen regulations were listed as being under development; four regulations were listed as being under active review; and eleven regulations were listed as to be reviewed in the future.

The fourth Semi-Annual Agenda was published on July 16, 1980 (45 FR 47695). The categories ("Regulations Under Development", "Regulations Reviewed", and "Regulations to be Reviewed") were continued. In addition, target dates were established for the completion of a "preliminary review memo" (setting forth the need for the regulations and alternatives to be considered) for each regulation to be reviewed in the first three year cycle under NCUA's "Final Report".

This Agenda retains the format used in its predecessor. Those regulations listed in the fourth Agenda as having been issued in final have not been included.

Agenda: Regulations Under Development

1.a. § 701.21–6A Agency Relationship with Approved Mortgage Lender, to permit Federal credit unions to act as agents for approved mortgage lenders.

b. Need: To provide mortgage loans to members of those Federal credit unions that are unable to otherwise provide such loans.

Legal Basis: 12 U.S.C. § 1757(5)(A) and (15); 12 U.S.C. § 1766.

Status: Proposed rule issued August 30, 1979 (44 FR 50850), comment period closed November 7, 1979. Under review by staff.

d. For further Information Contact: Robert M. Fenner, Deputy General Counsel or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

2.a. § 701.35(d)(2)(ii), Grace Periods for All Share Certificates, limiting grace periods uniformly to seven days after maturity.

b. Need: To establish uniformity and to facilitate equitable administration of rate regulations for all financial institutions.

Legal Basis: 12 U.S.C. 1757, 1766, and 1789.

c. Status: Final rule issued November 14, 1980 (45 FR 75169), effective November 10, 1980.

d. For Further Information Contact: Todd A. Okun, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030.

3.a. § 701.21–1(d), Deregulation of Loan Interest Rate Classifications, to permit Federal credit unions to vary rates of interest on loans according to reasonable classifications established by their boards of directors.

b. Need: To permit greater flexibility in establishing loan interest rates so as to reduce costs and increase the ability of the board of directors to manage the credit union's loan portfolio.

Legal Basis: 12 U.S.C. 1757, 1766, and 1789.

c. Status: Final rule issued August 28, 1980 (45 FR 75365), effective August 21, 1980.

d. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065, or

John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

4.a. § 701.35(m), Premiums, Finders Fees and the Payment of Dividends in Merchandise, to limit the use of the premiums by Federal credit unions.

b. Need: To prohibit practices which may result in returns on savings in excess of rate limitations; to enable consumers to better compare rate of return on savings; and to determine whether NCUA should adopt a rule proposed by the Depository Institutions Deregulation Committee.

Legal Basis: 12 U.S.C. 1766 and 1789.

c. Status: Proposed rule issued November 14, 1980 (45 FR 75224), comment period closed December 10, 1980.

d. For Further Information Contact: James J. Engel, Assistant General Counsel, or Todd A. Okun, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030.

5.a. §§701.34 and 701.35, Share, Share Draft, and Share Certificate Accounts; Part 761, Share Draft Programs for Federally Insured State Chartered Credit Unions, setting forth the requirements for the establishment and maintenance of share draft accounts.

b. Need: To relieve unnecessary requirements and to update essential requirements for the operation of share draft programs.

Legal Basis: 12 U.S.C. 1766, 1785, and 1789.

c. Status: Final rule issued November 14, 1980 (45 FR 75169), effective November 10, 1980 except that the first clause in § 701.35(1)(l)(iii) and §§ 701.35(1)(l) (viii) and (xi) are effective March 1, 1981.

d. For Further Information Contact: Todd A. Okun, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030, or Layne Bumgardner, Director, Division of Examination and Supervision, Office of Examination and Insurance, telephone: (202) 357–1065.

6.a. Delinquent Consumer Installment Loan Classification Policy, to set forth NCUA policy for classifying delinquent loans as losses.

b. Need: To clearly define the policy to be used by NCUA in determining whether certain delinquent loans should be considered to be losses and to determine whether this policy should be uniform with the policies of the other Federal financial institution regulatory agencies.

Legal Basis: 12 U.S.C. 1766 and 1789.

c. Status: Notice of proposed rulemaking to be submitted to NCUA Board in January, 1981.

d. For further Information Contact: Thomas A. Straslicka, Chief-Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

7.a. § 701.35(e), Withdrawals From Share Certificate Accounts, providing a minimum required penalty for withdrawals prior to maturity.

b. Need: To simplify existing rule on early withdrawals, to promote stability in Federal credit unions by deterring early withdrawals, and to establish uniform rules for financial institutions.

Legal Basis: 12 U.S.C. 1766 and 1789.

c. Status: Proposed rule issued June 25, 1980 (45 FR 42628); comment period closed August 18, 1980; NCUA Board deferred consideration of final proposed rule, November 14, 1980 (45 FR 75169).

d. For Further Information Contact: Todd A. Okun, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030.

8.a. §§701.22 and 701.23, Selling and Cashing Checks and Money Orders, removing regulatory restrictions.

b. Need: To simplify NCUA regulations and allow greater flexibility to the boards of directors of Federal credit unions in the establishment of policies and procedures for selling and cashing of checks and money orders.

Legal Basis: 12 U.S.C. 1757(12), 1766.

c. Status: Final rule issued December 1, 1980 (45 FR 79412) effective December 2, 1980.

d. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202) 357–1055.

9.a. § 701.21–6(b), Real Estate Lending, removing requirement of prior NCUA approval for credit unions under $2 million in assets and removing restrictions on loan origination fees.

b. Need: To reduce the burden of regulations and enable Federal credit unions to competitively provide real estate loan services to their members.

Legal Basis: 12 U.S.C. 1757, 1766, 1789.

c. Status: Proposed rule issued November 28, 1980 (45 FR 79079), comment period closes December 31, 1980.

d. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065, or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

10.a. Part 760 Flood Insurance, governing FCU lending secured by improved realty, or a mobile home, when either is located in a flood plain.

b. Need: To provide a plain English version of present NCUA flood insurance regulations.

Legal Basis: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4106.

c. Status: Proposed rule issued October 15, 1980 (45 FR 68398), comment period closes December 15, 1980.

d. For Further Information Contact: John L. Culhane Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030, or Ben R. Henson, Director, Division of Enforcement, Office of Consumer Affairs, telephone: (202) 357–1080.

11.a. Part 701, Adjustable Rate Mortgages, allowing credit unions to grant real estate loans with interest rates that will change during the life of the loan.

b. Need: To minimize the effects of volatile financial conditions on both home buyers and Federal credit unions.

Legal Basis: 12 U.S.C. 1757(5)(A)(i) and (ix).

c. Status: Advance notice of proposed rulemaking issued December 1, 1980 (45 FR 79494), comment period closes January 31, 1981.

d. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065; or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

12.a. § 742.2(a), Liquidity Reserves, amendment to permit reserves held for purposes of the Monetary Control Act of 1980 to qualify as reserves under NCUA's liquidity reserve regulation.

b. Need: To amend NCUA regulation to achieve conformance with Federal Reserve Act (§ 19(c)(2)) as amended by Monetary Control Act of 1980 (§ 104(a)), and eliminate unnecessary duplicative requirement.

Legal Basis: 12 U.S.C. 1762, 1766, 1789.

c. Status: Final rule issued November 4, 1980, (45 FR 73016), effective November 3, 1980.

d. For Further Information Contact: Thomas A. Straslicka, Chief-Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065, or Robert M. Fenner, Deputy General Counsel, Office of General Counsel, telephone: (202) 357–1030.

13.a. §§ 701.26, 701.27–1, 701.28, Joint Operations and Services, including Credit Union Service Center, Purchase and Sale of Accounting Services.

b. Need: To review to update and revise if necessary.

Legal Basis: 12 U.S.C. 1766 and 1789.

c. Status: Preliminary review memorandum submitted to NCUA Board in October, 1980; proposed regulation drafted and scheduled for Board consideration in January, 1981.

d. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202) 357–1065.

14.a. Part 741, Requirements for Insurance, clarifying prerequisites for insurance of credit union member accounts under Title II of the Federal Credit Union Act.

b. Need: Review to update and revise if necessary.

Legal Basis: 12 U.S.C. 1789.

c. Status: Proposed draft regulation under review; scheduled for consideration by NCUA Board in January, 1981.

d. For Further Information Contact: William Berens, Chief-Insurance Section, Office of Examination and Insurance, telephone: (202) 357–1060.

15.a. Part 749, Records Preservation Program, requiring credit unions to store duplicates of certain vital records off site.

b. Need: Review to update and revise if necessary.

Legal Basis: 12 U.S.C. 1766 and 1789.

c. Status: Proposed draft regulation under staff review; scheduled for presentation to the NCUA Board in February, 1981.

d. For Further Information Contact: Thomas A. Straslicka, Chief-Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

16.a. § 701.21, Loan Interest Rates, to permit Federal credit unions to charge interest rates on loans up to 21 percent.

b. Need: To safeguard the financial soundness of individual credit unions form rising money market interest rates.

Legal Basis: 12 U.S.C. 1757(5)(A)(iv)(I), 1757(5)(A)(iv), 1766.

c. Status: Final rule issued December 9, 1980 (45 FR 81032), effective December 3, 1980, expiring September 2, 1981 or as otherwise ordered by the NCUA Board.

d. For Further Information Contact: Robert H. Dugger, Director, Office of Policy Analysis, telephone: (202) 357–1090, or Robert M. Fenner, Deputy General Counsel, or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

17.a. § 701.13, Reporting Policy, to require that all federally insured credit unions file a Financial and Statistical Report on a semi-annual basis.

b. Need: To provide a uniform reporting instrument that presents necessary data to NCUA in an efficient, useable format.

Legal Basis: 12 U.S.C. 1756, 1782.

c. Status: Proposed rule approved by NCUA Board December 3, 1980.

d. For Further Information Contact: Mike Fischer, Chief—Accounting and Auditing Section, Office of Examination and Insurance, telephone: (202) 357–1065, or Steven Bisker, Attorney-Advisor, Office of Genral Counsel, telephone: (202) 357–1030.

Review of Regulations

The following is a list of regulations to be reviewed in the future. The purpose of the review will be to update, clarify, and simplify existing regulations, and to eliminate redundant and unnecessary provisions. These regulations are divided into two groups. The first grouping contains those regulations in which substantial progress has been made (since the last publication of the Agenda) and includes a statement concerning the status of the review. The second grouping contains those regulations yet to be reviewed. Each regulation listed in the second grouping contains a target date for the submission of a "preliminary review memo" by the staff to the NCUA Board. This memo will set forth the need for the regulation, any needed changes, and the alternatives to be considered.

A. Regulations Reviewed

1.a. §§ 701.2 and 701.14, Incorporation by Reference, *Accounting Manual For FCUs.*

b. Status: New edition under staff review.

c. For Further Information Contact: Mike Fischer, Chief—Accounting and Auditing Section, Office of Examination and Insurance, telephone: (202) 357–1065.

2.a. § 701.21–1(d), Loan Interest Rate Classification, review to deregulate and to permit Federal credit unions to establish their own classifications.

b. Status: Final regulation issued, see: Regulations Under Development, No. 3 (above).

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065.

3.a. § 701.34, Share Drafts, review to relieve unnecessary requirements and update essential requirements.

b. Status: Final regulation issued, see: Regulations Under Development, No. 5 (above).

c. For Further Information Contact: Todd A. Okun, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030, or Layne Bumgardner, Director, Division of Examination and Supervision, Office of Examination and Insurance, telephone: (202) 357–1065.

4.a. §§ 701.22 and 701.23, Selling and Cashing Checks and Money Orders, review to deregulate.

b. Status: Final regulation issued, see: Regulations Under Development, No. 8 (above).

c. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202)357–1065.

5.a. § 701.21–6(b), Real Estate Lending, review to deregulate prior approval requirement for credit unions under $2 million and to deregulate loan origination fees.

b. Status: Proposed regulation issued, see: Regulations Under Development, No. 9 (above).

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202)357–1065, or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

6.a. §§ 701.26, 701.27, 701.28, Joint Operations and Services, review to update, consolidate, and relieve unnecessary restrictions.

b. Status: Proposed regulation drafted; see: Regulations Under Development, No. 13 (above).

c. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202) 357–1065.

7.a. Part 703, Investments and Deposits, review to update necessary requirements and to relieve unnecessary restrictions.

b. Status: Staff reviewing transfer of certain requirements to the *Accounting Manual for FCUs.*

c. For Further Information Contact: Robert Schafer, Chief—Supervision Section, Office of Examination and Insurance, telephone: (202) 357–1065.

8.a. Part 721, Incidental Powers, review of restrictions on credit union insurance and group purchasing activities.

b. Status: Advance notice of proposed rulemaking drafted, to be presented to NCUA Board December 18, 1980.

c. For Further Information Contact: Daniel Gordon, Senior Financial Economist, Office of Policy Analysis, telephone: (202) 357–1090.

9.a. Part 735, Employee Responsibility and Conduct, review to update.

b. Status: NCUA Board members currently reviewing a memorandum covering the need to revise this regulation.

11.c. For Further Information Contact: James J. Engel, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030.

10.a. Part 741, Requirements for Insurance, review to simplify and reduce burdens.

b. Status: Proposed regulation drafted; see: Regulations Under Development, No. 14 (above).

c. For Further Information Contact: William Berens, Chief—Insurance Section, Office of Examination and Insurance, telephone: (202) 357–1060.

11.a. § 742.2, Liquidity Reserves, review to update list of investments qualifying as liquid assets.

b. Status: Final regulation issued, see: Regulations Under Development, No. 12 (above).

c. For Further Information Contact: Thomas A. Straslicka, Chief—Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065, or Robert M. Fenner, Deputy General Counsel, Office of General Counsel, telephone: (202) 357–1030.

12.a. Part 749, Records Preservation Program, review to simplify and relieve burdens.

b. Status: Proposed regulation drafted; see: Regulations Under Development, No. 15 (above).

c. For Further Information Contact: Thomas A. Straslicka, Chief—Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

13a. Part 760, Flood Insurance, review to simplify.

b. Status: Proposed regulation issued, see: Regulations Under Development, No. 10 (above).

c. For Further Information Contact: John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

14.a. § 701.13 Reporting Policy, review to revise reporting format.

b. Status: Proposed regulation issued, see: Regulations Under Development, No. 17 (above).

c. For Further Information Contact: Mike Fischer, Chief—Accounting and Auditing Section, Office of Examination and Insurance, telephone: (202) 357–1065, or Steven Bisker, Attorney-Advisor, Office of General Counsel, telephone: (202) 357–1030.

15.a. § 701.30, Safe Deposit Box Service, concerning the construction, location, leasing, access, and recordkeeping procedures for this service to Federal credit union members.

b. Status: Under staff review; draft of final regulation to be presented to NCUA Board December 1980.

c. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202) 357–1065.

B. Regulations To Be Reviewed

1.a. § 700.1, Definitions, review to update and clarify.

b. Target Date: September 30, 1981.

c. For Further Information Contact: Layne Bumgardner, Director, Division of Examination and Supervision, Office of Examination and Insurance, telephone (202) 357–1065.

2.a. §§ 701.2 and 701.14, Incorporation by Reference, to complete review of these sections by reviewing the status of the *Federal Credit Union Bylaws.*

b. Target Date: August 31, 1981.

c. For Further Information Contact: Jon Lander, Chief—Chartering Section, Office of Examination and Insurance, telephone: (202) 357–1060.

3.a. §§ 701.3 and 701.4, Standard Form of Bylaws and Amendment of Bylaws, review to determine whether the regulations on this subject are necessary.

b. Target Date: September 30, 1981.

c. For Further Information Contact: Jon Lander, Chief—Chartering Section, Office of Examination and Insurance, telephone: (202) 357–1060.

4.a. § 701.5, Other Applications, and § 701.18, Petitions, review to consolidate with other administrative rules.

b. Target Date: March 31, 1981.

c. For Further Information Contact: Robert S. Monheit, Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

5.a. § 701.11, Election Report, review to determine whether the regulation is necessary to require submission of needed report.

b. Target Date: March 31, 1981.

c. For Further Information Contact: Thomas A. Straslicka, Chief—Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

6.a. § 701.12, Supervisory Committee Audit, review to determine whether the regulation on this subject is necessary or whether the subject might be covered in a manual.

b. Target Date: June 30, 1981.

c. For Further Information Contact: Mike Fischer, Chief—Accounting and Auditing Section, Office of Examination and Insurance, telephone: (202) 357–1065.

7.a. § 701.19, Retirement Benefits for Employees of Federal Credit Unions, review to update and revise if necessary.

b. Target Date: September 30, 1981.

c. For Further Information Contact: Layne Bumgardner, Director, Division of Examination and Supervision, Office of Examination and Insurance, telephone: (202) 357–1065.

8.a. § 701.20, Surety Bond and Insurance coverage, review to update and revise if necessary.

b. Target Date: December 31, 1980.

c. For Further Information Contact: Thomas A. Straslicka, Chief—Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

9.a. §§ 701.21–1 through 701.21–6, Lending Regulations, review to update, simplify, and revise if necessary.

b. Target Date: July 31, 1981.

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065, or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

10.a. § 701.21–7, Loan Participations, review to update and revise if necessary.

b. Target Date: July 31, 1981.

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065.

11.a. § 701.32, Payment on Shares By Public Units, review to update and revise, and to determine whether subject may be covered in a manual rather than a regulation.

b. Target Date: August 31, 1981.

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065.

12.a. § 701.33, Compensation of Officials, review to update and revise if necessary.

b. Target Date: March 1, 1982.

c. For Further Information Contact: Todd A. Okun, Assistant General Counsel, telephone: (202) 357–1030.

13.a. § 701.36, Federal Credit Union Ownership of Fixed Assets, review to update and revise if necessary.

b. Target Date: October 30, 1981.

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065.

14.a. Part 702, Reserves, review to update and revise if necessary.

b. Target Date: June 30, 1981.

c. For Further Information Contact: Randall J. Miller, Director, Regulatory Policy and Research Division, Office of Policy Analysis, telephone: (202) 357–1090.

15.a. Parts 706 and 707, Conversion from Federal to State Credit Union, and Conversion from State to Federal Credit Union, review to determine whether the regulations on this subject are necessary or whether the subject may be covered in a manual.

b. Target Date: March 30, 1981.

c. For Further Information Contact: Jon Lander, Chief—Chartering Section, Office of Examination and Insurance, telephone: (202) 357–1060.

16.a. Parts 708 and 709, Mergers of Credit Unions, Division of Assets, Liabilities, and Capital, review to determine whether regulations on these subjects are necessary or whether they may be covered in a manual.

b. Target Date: November 30, 1980.

c. For further Information Contact: Jon Lander, Chief—Chartering Section, Office of Examination and Insurance, telephone: (202) 357–1060.

17.a. Part 720, Description of Office, Disclosure of Official Records, Availability of Information, and Promulgation of Regulations, review to update, simplify and revise if necessary.

b. Target Date: March 30, 1981.

c. For Further Information Contact: Robert Monheit, Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

18.a. Part 740, Advertisement of Insured Status, review to update, simplify and revise if necessary.

b. Target Date: October 30, 1980.

c. For Further Information Contact: William Berens, Chief—Insurance Section, Office of Examination and Insurance, telephone: (202) 357–1060.

19.a. Part 745, Clarification and Definition of Account Insurance Coverage, review to update, simplify and revise if necessary.

b. Target Date: January 30, 1982.

c. For Further Information Contact: James J. Engel, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030.

20.a. Part 746, Rebate Procedures for Federally Insured Credit Unions, review to update and revise if necessary.

b. Target Date: November 30, 1980.

c. For Further Information Contact: Phillip J. Daniels, Director, Division of Financial Management, Office of the Comptroller, telephone: (202) 357–1025.

21.a. Part 748, Minimum Security Devices and Procedures, review to update and simply.

b. Target Date: September 30, 1981.

c. For Further Information Contact: Thomas A. Straslicka, Chief-Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

22.a. Part 750—Tort Claims Against the Government, review to update, simplify and revise if necessary.

b. Target Date: December 31, 1981.

c. For Further Information Contact: Jay C. Keithley, Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

Beatrix D. Fields,

Acting Secretary, National Credit Union Administration Board.

December 18, 1980.

[FR Doc. 80-40155 Filed 12-23-80; 8:45 am]

BILLING CODE 7535-01-M

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Part 1204

[Docket No. D-0015]

Penalty for Early Withdrawals of Time Deposit Funds in the Event of Bankruptcy

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Proposed rulemaking.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") is considering amending the penalty for early withdrawals of time deposit funds to permit penalty-free withdrawal in the event of bankruptcy of the depositor.

DATES: Comments must be received by February 16, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed rule to Normand R. V. Bernard, Executive Secretary, Depository Institutions Deregulation Committee, Federal Reserve Building, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551. All material submitted should include the Docket Number D-0015. Such material will be made available for inspection and copying upon request except as provided in § 1202.5 of the Committee's Rules Regarding Availability of Information (12 CFR 1202.5).

FOR FURTHER INFORMATION CONTACT: F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389–4261), John Harry Jorgenson, Attorney, Board of Governors of the Federal Reserve System (202/452–3778), Allan Schott, Attorney-Advisor, Treasury Department (202/566–6798), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377–6446) Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447–1632), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452–3612).

SUPPLEMENTARY INFORMATION: The Committee is considering amending the early withdrawal penalty rule to authorize depository institutions to permit penalty-free early withdrawals of time deposit funds in the event of the bankruptcy of the depositor. Under current rules, federally insured commercial banks, mutual savings banks, and savings and loan associations are required, with certain exceptions, to impose a penalty upon the withdrawal of time deposit funds prior to maturity. The minimum required penalty generally is an amount equal to three months' simple interest on the funds withdrawn where the original maturity of the time deposit is three months to one year, and an amount equal to six months' simple interest on the funds withdrawn where the original maturity of the time deposit is more than one year. With respect to time deposits with an original maturity of less than three months, the minimum required penalty for early withdrawal is a forfeiture of an amount equal to the amount of simple interest that could have been earned on the funds withdrawn if the funds had remained on deposit until maturity. (12 CFR 1204.103).

Imposition of the early withdrawal penalty when funds are withdrawn in the event of bankruptcy may reduce the assets available to pay the claims against the debtor's estate. The Committee believes that that adoption of a bankruptcy exception would not significantly increase the administrative burden of the penalty since the exception, as in the case of the current exceptions providing for penalty-free withdrawals in the event of death, incompetence and where an IRA/Keogh depositor is 59½ or disabled, would be subject to well-defined criteria.

Specific comment is requested on whether such an exception, if adopted, should:

(1) apply to corporations as well as to individuals with regular incomes and small sole properietors;

(2) apply to liquidations (Chapter 7), municipal debt adjustments (Chapter 9), rehabilitations and reorganizations (Chapter 11) and, in the case of individuals, extended repayment plans (Chapter 13) under the bankruptcy code;*

(3) permit penalty-free withdrawals to be made upon the filing of a petition for bankruptcy or only upon an adjudication of bankruptcy or a court ordered distribution of the debtor's estate; and

(4) permit penalty-free withdrawals to be made by a debtor-in-possession as well as by a trustee in bankruptcy.

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*Chapter references are to Title II of the United States Code entitled "Bankruptcy."

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,

Executive Secretary of the Committee.

[FR Doc. 80-40080 Filed 12-23-80; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 1204

[Docket No. D-0017]

Retirement Accounts

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Proposed rulemaking.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") is considering proposed rules that would: (1) enable time deposits held in Individual Retirement Accounts ("IRAs") and Keogh (H.R. 10) plans to accommodate routine additions more conveniently; (2) reduce the three-year maturity of the special IRA/Keogh deposit category to one year; (3) increase, revise, or eliminate the current 8 percent ceiling rate of interest payable on the special IRA/Keogh deposit category; and (4) create a new IRA/Keogh time deposit with a minimum required maturity of 14 days and no prescribed ceiling rate of interest. The proposed rules would facilitate the use of time deposits for retirement savings and encourage the increased use of IRA/Keogh plans consistent with the intent of Congress in the Employee Retirement Income Security Act of 1974 to encourage individuals to save for their retirement.

DATES: Comments must be received by March 20, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed rules to Normand R. V. Bernard, Federal Reserve Building, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551. All material submitted should include the Docket Number D-0017. Such material will be made available for inspection and copying upon request except as provided in § 1202.5 of the Committee's Rules Regarding Availability of Information (12 CFR 1202.5).

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Attorney, Board of Governors of the Federal Reserve System (202/452-3778), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389-4261), Allan Schott, Attorney-Advisor, Department of Treasury (202/566-6798), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446), Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447-1632), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452-3612).

SUPPLEMENTARY INFORMATION: Although the intent of the Employee Retirement Income Security Act of 1974 ("ERISA") is to encourage qualified individuals to develop their own pension plans, IRAs and Keoghs have not been fully utilized. In 1977, only 3.3 per cent of eligible taxpayers in the $11,000 to $15,000 income class held some form of retirement account in a depository or nondepository institution, while 52.4 per cent of those with incomes of $50,000 or more held some form of retirement account. (Latest available data.) In view of the Congressional intent to encourage individuals to save for their retirement, the Committee is considering regulatory actions that would increase the attractiveness of IRA/Keogh accounts at depository institutions by reducing present administrative obstacles to periodic additions to IRA/Keogh time deposits and by increasing the yield available to retirement savers.

The current regulations of the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Federal Deposit Insurance Corporation ("FDIC"), and The Federal Home Loan Bank Board ("FHLBB"), provide that IRA/Keogh funds may be invested in a regular savings account or in any time deposit category including the special three-year, 8 per cent IRA/Keogh account. The interest rate ceilings on time deposits held in IRAs or Keoghs are the same as on nonretirement accounts, except that there is no differential in the rates that banks and thrifts may pay on IRA/Keogh funds invested in the 26-week money market certificate, in the 2½ year or longer small saver certificate, or the special three-year IRA/Keogh deposit category.

The agencies' regulations governing account additions, however, are not uniform and complicate the use of time deposits, particularly variable ceiling time deposits, for periodic deposits to IRAs or Keoghs. Under Federal Reserve and FDIC rules, each addition to a time deposit is regarded either as having a separate and distinct maturity equal to the originally agreed upon maturity or as resetting the maturity of the entire account. Federal Reserve and FDIC regulations also require that the rate of interest paid on an addition to any existing time deposit not exceed the applicable ceiling rate on the date the additional deposit is made. This makes it impractical to use variable ceiling rate accounts to make routine additions to IRA/Keogh accounts. Under FHLBB rules, a fixed ceiling time deposit may be structured to provide for routine periodic additions. Each time an addition is made, however, the maturity of the entire account is reset for a period equal to the term of the original account. No additions to variable ceiling accounts are permitted.

The Committee requests comment on five options designed to reduce the administrative complexities associated with IRA/Keogh time deposits and to provide a more attractive yield to retirement savers. Option 1 reduces the minimum maturity of the existing special three-year IRA/Keogh account to one year. Options 2 and 3 provide for the creation of a new IRA/Keogh one-year notice account that would facilitate the receipt of periodic deposits. Option 4 presents three alternative ceiling rate options that could be applied to the currently authorized special three-year account, the one-year account described in Option 1, or the notice accounts presented in Options 2 and 3. Option 5 provides for the creation of a new 14-day IRA/Keogh time deposit with no prescribed ceiling rate of interest. A discussion of the five options follows.

Option 1—*Reduce IRA/Keogh Account Maturity to One Year*

When the existing special three-year IRA/Keogh account was established in 1977, the minimum maturity of the account coincided with the ERISA provisions permitting the tax penalty-free rollover of IRA funds from one trustee to another once every three years. Tax penalty-free IRA rollovers, however, are now permitted once a year. In order to keep the maturity of the special IRA/Keogh account consistent with tax law, the Committee proposes to reduce the minimum maturity of the special three-year IRA/Keogh account to one year.

Reducing the maturity to one year, if accompanied by a significant increase in or elimination of the 8 percent ceiling rate on the special IRA/Keogh account, would provide depository institutions with greater flexibility in designing and marketing retirement savings programs. However, reducing the maturity of the account may contribute to a reduction in depository institution account stability, if depositors make use of their annual reinvestment privileges to rollover their existing IRA/Keogh accounts into tax qualified retirement plans at other institutions.

Options 2 and 3—*Create IRA/Keogh Notice Account to Facilitate Periodic Deposits*

Option 1 is modest in scope, adjusting the maturity of IRA/Keogh time deposits to accommodate an earlier change in ERISA; it does not solve the problems associated with routine periodic additions under current regulations. Consequently, to reduce administrative complexities, the Committee is considering establishing an IRA/Keogh notice account that would facilitate the receipt of periodic additions. Options 2 and 3 present alternative methods for structuring this account. A notice account is an account from which funds may not be withdrawn prior to the expiration of a period of notice which must be given by the depositor a specified number of days in advance of withdrawal. Notice could take a variety of forms including a specific written notice from the depositor or arrangements in which notice is given automatically on the anniversary of the account or each time a deposit is made.

Under Option 2: (a) A one-year notice of intent to withdraw on a specified date is required;

(b) the institution may accept regular additions to the account at any time up to 14 days before the expiration or end of the notice period, and all funds on deposit could be withdrawn upon the expiration of the notice period;

(c) Interest could be paid on all additions to the account at the specified contract rate; and

(d) An early withdrawal penalty would be imposed on withdrawals made prior to the expiration of the one-year notice period.

Under Option 3: (a) A one-year notice of intent to withdraw on a specifed date is required;

(b) The institution may accept regular additions to the account at any time, but the amount withdrawn could not exceed the amount on deposit at the time of notice;

(c) Interest could be paid on all additions to the account at the specified contract rate; and

(d) An early withdrawal penalty would be imposed on withdrawals made prior to the expiration of the one-year notice period.

A strength of these options is that they establish IRA/Keogh accounts that readily accommodate routine periodic additions and can easily be understood by both account holders and the institutions authorized to offer the accounts. Under both Options 2 and 3 the one-year notice required for withdrawal accommodates IRA depositors' annual rollover privilege as provided by the amended ERISA; it also facilitates depositor shifting to more attractive retirement investment alternatives when they exist, as contemplated by the recent amendment to ERISA. The Committee believes that structuring either account as a one-year notice account is preferable to establishing an account with a stated maturity of one year that could accept periodic deposits. A notice account would tend to lessen deposit volatility since funds would not mature automatically at the end of a year.

Option 2 would make the administration of the notice account less complex since all funds on deposit could be withdrawn at one time. Under Option 2, however, depository institutions may be concerned that even after notice is given depositors would be able to earn interest at the contract rate on funds on deposit for as little as 14 days.

Option 4—*Increase, Revise, or Eliminate IRA/Keogh Interest Rate Ceiling*

Options 2 and 3 deal primarily with the administrative problems of making routine additions to IRA/Keogh accounts, but do not address the issue of what deposit rate ceilings, if any, should be applied. The Committee is considering the following ceiling rate options that could be applied to the currently authorized special three-year account, the one-year account described in Option 1, or the notice accounts presented in Options 2 and 3.

(a) Prescribe no ceiling rate of interest;

(b) Establish a fixed ceiling at a rate greater than 8 per cent. Within the ceiling rate limitations, an institution could change the rate paid on the account with one year's notice or change the rate immediately if required by a regulatory ceiling rate change; or

(c) Establish a floating ceiling indexed to the rate on U.S. Government securities of specified maturity (e.g., 91 day, 182 day, one year, or two and a half year Treasury security yield). Changes in the ceiling rate could occur quarterly, semi-annually, or annually.

Option 5—*Create 14-Day IRA/Keogh Time Deposit*

The Committee also is considering establishment of an IRA/Keogh plan time deposit with a minimum required maturity or notice period of 14 days. No ceiling rate of interest payable on this special category would be prescribed. This option would provide maximum flexibility to depository institutions in structuring retirement accounts. Under this option, an institution could choose any maturity (so long as the 14-day minimum maturity requirement is satisfied) or rate (for example, fixed or floating) for the deposit.

The Committee believes that the proposals presented would enable depository institutions to tailor IRA/Keogh plans to specific saver needs and market circumstances and thereby attract and retain relatively stable retirement funds. In addition, these proposals would encourage savings and, by enhancing the competitive posture of depository institutions vis-a-vis nondepository institutions, would enable depository institutions to function more safely and soundly in increasingly competitive financial markets. The Committee is concerned, however, that adoption of any of the proposals making IRA/Keogh accounts significantly more attractive could encourage depositors not qualified to open IRA/Keogh accounts to open such accounts. To lessen the potential for abuse, the Committee is considering adoption of a provision requiring an appropriate official of the depository institution to obtain certification from each depositor that he or she qualifies to hold an IRA/Keogh account. Such certification for IRAs might include presentation of a W–2 form indicating eligibility.

To aid in its consideration, the Committee requests comment on the five options discussed above. Specific comments also are requested on:

(1) The minimum required early withdrawal penalty that should be imposed on withdrawals prior to the receipt and expiration of the one-year notice period under Options 2 and 3;

(2) The minimum required early withdrawal penalty that should be imposed on premature withdrawals under Option 5;

(3) The potential for misuse of IRA/Keogh accounts under any of the options and steps that might be taken to lessen the potential for misuse;

(4) The ceiling rate options (e.g., no ceiling, fixed rate ceiling, or floating ceiling) that would be most attractive to depository institutions and their customers;

(5) The Treasury bill security that should be selected as the index if a floating rate ceiling is adopted (Option 4c) and the frequency of change in the ceiling rate (e.g., quarterly, semi-annually, annually);

(6) The potential impact of the proposals on deposit stability at depository institutions;

(7) The effect of the proposals on the earnings of depository institutions;

(8) Whether, in the event any of the options is adopted, institutions should be authorized to permit existing IRA/

Keogh depositors to immediately convert their accounts without imposition of the early withdrawal penalty; and

(9) Any other proposals that would reduce the administrative complexities of using time deposits to fund IRAs and Keoghs.

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,

Executive Secretary of the Committee.

[FR Doc. 80-40061 Filed 12-23-80; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 1204

[Docket No. D-0016]

Effective Date of Ceiling Rates on MMC's and SSC's

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Proposed rulemaking.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") proposes to adopt rules reducing the period between the announcement and the effective date of the ceiling rates of interest payable on the 26-week money market certificate (MMC) and on the 2½ year and longer small saver certificate (SSC). Under the current rules, the ceiling rates of interest payable on MMCs and SSCs are announced on Monday and are effective the following Thursday. Under the proposed rules, the ceiling rates of interest announced on Monday would become effective on the following Tuesday or, as an alternative, Wednesday.

DATES: Comments must be received by February 16, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed rules to Normand R. V. Bernard, Executive Secretary, Depository Institutions Deregulation Committee, Federal Reserve Building, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All material submitted should include the Docket Number D-0016. Such material will be made available for inspection and copying upon request except as provided in § 1202.5 of the Committee's Rules Regarding Availability of Information (12 CFR § 1202.5).

FOR FURTHER INFORMATION CONTACT: F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389-4261), John Harry Jorgenson, Attorney, Board of Governors of the Federal Reserve System (202/452-3778), Allan Schott, Attorney-Advisor, Treasury Department (202/566-6798), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446), Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447-1632), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452-3612).

SUPPLEMENTARY INFORMATION: The ceiling rate of interest payable on MMCs is tied to the discount yield (auction average) on the most recently issued six-month United States Treasury bills. United States Treasury bills maturing in six months normally are auctioned on Monday and, under current rules, the ceiling rate of interest based on the discount yield (auction average) is effective the following Thursday, the day on which the Treasury bills are issued. This ceiling rate is effective until the next issuance of six-month United States Treasury bills. The ceiling rate of interest payable on SCCs is tied to the average 2½ year yield for United States Treasury securities as determined bi-weekly by the United States Treasury. The average 2½ year yield on United States Treasury securities is announced by Treasury on Monday afternoon (based on the average 2½ year yield for the five business days ending on Monday) and, under current rules, the ceiling rates based on that average 2½ year yield are effective for a two-week period beginning on the following Thursday.

In order to more closely link the ceiling rates of interest payable on MMCs and SSCs with current market rates, the Committee proposes to adopt rules reducing the time between the announcement and effective date of the ceiling rates. Under the proposed rules, the ceiling rates announced on Monday would be effective for new MMCs or SSCs issued on the following Tuesday or Wednesday rather than on the following Thursday. Comment is requested on whether a Tuesday or, as an alternative, a Wednesday effective date would allow sufficient time for institutions to make any changes necessary for implementation of the new ceiling rates. Comment is particularly requested on potential problems that institutions may encounter in (1) obtaining information on the new ceiling and (2) posting or advertising the new ceiling rate.

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,

Executive Secretary of the Committee.

[FR Doc. 80-40063 Filed 12-23-80; 8:45 am]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

Surety Bond Guarantee; Revision of Rules and Regulations

AGENCY: Small Business Administration.

ACTION: Proposed rules.

SUMMARY: These proposed rules and regulations would replace the existing regulations governing the surety bond guarantee program. The revision is brought about primary as a result of enactment of amendments (Pub. L. 95-507, 92 Stat. 1757, October 24, 1978) to the statutory authority for this program (15 U.S.C., Sec. 694 a and b).

The proposed regulations would make changes which are mandated by the legislation and changes where the SBA has decided to adopt new discretionary authority under the legislation. The other changes are designed to clarify and simplify the existing surety bond guarantee regulations.

The changes deal essentially with underwriting standards, the SBA guarantee, and other aspects of participation by sureties in the program. The change affecting small contractor applicants has to do with fees payable to SBA and participating sureties by the contractor.

DATES: Comments must be received on or before February 23, 1981.

ADDRESSES: Comments are to be addressed to Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Howard F. Huegel, Acting Chief, Surety Bond Guarantee Section, Office of Special Guarantees, 1815 N. Lynn Street, Arlington, Virginia 22209, (703) 235-2907.

SUPPLEMENTARY INFORMATION: Covered by this proposed revision of the regulations are: (1) the primary factors SBA may use in determining whether to impose upon particular surety terms and conditions of the SBA guarantee which may vary from those used by SBA in connection with another surety; (2) the specific circumstances in which SBA may refuse to issue further guarantees to a surety, modify the conditions under which such guarantees will be issued; (3) the specific grounds upon which SBA may deny liability under the SBA guarantee; (4) the definition of a surety; (5) the scope of the audit SBA may perform on the premises of a participating surety; (6) the "ancillary" bonds to which the SBA guarantee may extend; (7) the long-standing Agency requirement that principals of the contractor possess good character and

reputation; (8) the abolition of the previous requirement for a non-refundable bid bond fee payable with each application and an increase in the guarantee fee payable to SBA by the contractor upon issuance of a final performance or payment bond; (9) an increase in the premium that the surety may charge to a contractor on contracts over $250,000; (10) clarification of what loss by surety is reimbursable by SBA under the guarantee; (11) deletion of oral approval authority to SBA field offices; and (12) a provision that SBA will guarantee a surety bond only in cases where work under a contract is not yet underway.

To overcome weaknesses with respect to the SBA guarantee, and to remove operational problems, Congress passed Pub. L. 95–507, amending Part B of Title IV of the Small Business Investment Act (15 U.S.C., Sec. 694 a and b) (the "Act"). These amendments to the Act provided for certain mandatory changes and for certain new discretionary authority to SBA.

Mandated Changes

Under the amendments, the nature of SBA's guarantee is clarified and circumstances under which SBA may deny liability are specified. These mandatory changes have been incorporated into the proposed regulations at § 115.11.

The Act makes changes in the definition of two key terms. First, the definition of surety is broadened to include "agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person." This definition appears in § 115.3. Second, as now provided by the Act, the SBA gurantee may extend to bonds which are "ancillary" to and "coterminous" with bid, performance, and payment bonds. Such "ancillary and coterminous bonds" (defined in § 115.2(c)) have been defined by SBA as being those bonds incidental to the contract and essential to its performance.

Changes Based Upon Discretionary Authority

The statutory amendments gave new discretionary authority to the Administration permitting it to vary from surety to surety the terms and conditions of an SBA guarantee of a surety bond. SBA submits that it is in the best interest of the program to adopt this authority. A proposed new rule, therefore, appears at 115.6(b). With the new rule are examples of possible factors which could form a basis for a determination by the Administration to impose, upon a particular surety, terms and conditions which vary from those used by SBA in connection with another surety.

As provided by the statutory amendments, SBA may issue regulations requiring sureties to meet Agency standards in their underwriting, claims practices, and loss ratios. It is SPA's policy that sureties participating in the program adhere to the principles and standards prevailing in the surety industry in regard to underwriting and claim practices. However, SBA recognizes that there must be flexibility in regard to the standards applying to small contractors because of the nature of the Surety Bond Guarantee Program. The Agency believes it is in the best interest of the program to adopt criteria whereby the Agency can refuse to continue to guarantee bonds of a surety whose operations as a participant have not been entirely satisfactory from the Administration's standpoint as a guarantor of the surety's bonds, or impose other sanctions on a surety which experiences excessive losses, subject to the right of the surety to appeal. The proposed new criteria appear in the new rule at § 115.12.

SBA has decided that it will not propose at this time a regulation regarding loss ratios other than the sanctions mentioned in the preceding paragraph. A more specific proposal will be made after criteria are developed.

Other Changes

For some time, SBA has been operating, on a trial basis, a form of blanket authorization for contractors who have demonstrated a record of satisfactorily performing contracted work. The objective has been to facilitate the issuance of bid bonds to a contractor, within pre-approved limits, where the surety's and the contractor's performance record justified pre-qualification for bonds within established limits. Otherwise, before a surety's issuance of a bid bond under the SBA guarantee, SBA must review and act upon a separate application for each individual bond. Since only a fraction of bids result in a final bond, it has been an SBA objective to reduce the SBA review process on bid bonds. The Agency's experience with this trial system has been satisfactory and useful. Savings in time to contractors, sureties, and SBA have been significant. Based upon the experience, SBA had decided to adopt the surety bonding line concept. New regulations for this selective, pre-approval guarantee system are found at § 115.10.

As presently in effect, § 115.4(b) requires that an eligible applicant "operate or propose operation of a business in conformity with Part 120" of the Regulations. This requirement would be deleted by this revision. In its place, § 115.4(b) would be changed to incorporate the Agency's longstanding requirement that an applicant's principals have good character and reputation.

Explicit authority for SBA to audit participating sureties is contained in the 1978 Act and has been incorporated in the Regulations, at § 115.13. The fees charged a contractor would be modified. The present requirement for a $10 bid bond fee payable with each application would be abolished. Under the proposed change, SBA would make no charge until a final bond has been issued. No charge would be made for bid bonds, but to offset this and to reduce SBA's losses under the program, it is proposed that the present SBA charge of $2.00 per $1,000 of the contract amount be changed to one-half percent (.5%) of the contract amount.

SBA has been concerned that relatively few bonds under the program are issued for contracts of over $250,000 as compared with the number just under $250,000. Existing SBA policy presents a disincentive for participating sureties to issue bonds where the contract price is over $250,000. At present, SBA limits a surety to a bond premium of one percent for the part of the contract price which exceeds $250,000, as compared with a premium of one and a half percent allowable on the first $250,000. To provide greater opportunities for larger size contracts for contractors participating in the program, SBA proposes now to remove the existing two-tier structure applicable to the maximum permissible premium rate. The primary objective is to increase the competition in the surety industry to issue bonds on larger-size contracts for the small contractors in the program. Small contractors attempting to bid on larger contracts will benefit from having more sureties willing to bond them.

Proposed § 115.9(c) ("Surety Bond Premiums") would establish a uniform maximum acceptable premium rate of 1.5 percent of contract price, for bonds of any size issued under the program. (All premium rates would continue to be subject to the authorization of the appropriate State Insurance Department.) SBA has not changed its maximum for acceptable bond premium rates since 1976. Approximately two years ago, "Manual" rates of the Surety Association of America were increased.

The 1978 Act empowers but does not require SBA to make periodic advance payments to sureties based upon the surety's past losses incurred in the program. Under such a procedure, SBA,

upon final payment, would adjust such previous "advance" disbursements. SBA has given consideration to the need for implementing this authority but has determined that it would be inappropriate to implement it until such time as a complete evaluation of the present claims payment system is completed.

Finally, the revision would delete the authority of SBA field offices to give temporary oral approvals to surety bond applications, and would provide that guarantees will be issued only when work under a contract is not yet underway. It has been SBA's experience that contrary practices have been deleterious to the program.

Notice is hereby given that, pursuant to the authority of 15 U.S.C. Sec. 687(c) and 15 U.S.C. Secs. 694a and 694b, it is proposed to revise as set forth below, Part 115, Chapter I, Title 13 of the Code of Federal Regulations:

PART 115—SURETY BOND GUARANTEE

Sec.

115.1 Statutory Provisions.
115.2 Policy.
115.3 Definitions.
115.4 Eligibility.
115.5 Procedures for Surety Bond Guarantee Assistance.
115.6 Guarantee Agreement.
115.7 Surety's Underwriting Standards.
115.8 SBA's Underwriting Review.
115.9 Guarantee Fees and Surety Bond Premiums.
115.10 Surety Bonding Line.
115.11 Loss Under Bond.
115.12 Refusal to Issue Further Guarantees.
115.13 Audit of Participating Sureties.

Authority: Title IV—Part B, of the Small Business Investment Act of 1958, 15 U.S.C. 694a, 694b.

§115.1 Statutory Provisions.

The relevant statutory provisions will be found at 15 U.S.C. 694a, *et seq.*

§ 115.2 Policy.

(a) It is the intent of Congress to strengthen the competitive free enterprise system by assisting qualified small business concerns to obtain bid, payment, or performance bonds which are otherwise unobtainable without an SBA guarantee. Consequently, Congress has authorized SBA to guarantee sureties participating in the Surety Bond Guarantee Program up to 90 percent of the losses incurred as a result of a principal's breach of the terms of a bid bond, payment bond, performance bond, or bonds which are ancillary and coterminous with such bonds, on any contract not exceeding one million dollars in face value. On multiple requests for bond guarantees by one contractor on one project, the aggregate amount of the contracts shall not exceed $1,000,000.

(b) *Percentage Guarantee.* SBA may guarantee up to 90 percent of the loss incurred and paid under a bond on a contract up to $250,000 in face value and up to 80 percent of the loss incurred and paid under a bond on a contract between $250,000 and $1,000,000 in face value.

(c) *Types of Bonds.* The Administration has determined that only bid, performance, and payment bonds issued in connection with a contract and of a type listed in the "Contract Bonds" section of the Rating Manual of the Surety Association of America will be eligible for an SBA guarantee. In addition, the SBA guarantee may be expressly extended in writing to such "ancillary" bonds as are incidental to the contract and essential for its performance. From time to time, SBA reviews the bond forms used in the surety bond industry to determine whether or not the terms and conditions of any bond form are reasonable in light of the risks involved and the extent of the guarantee by SBA of a participating surety's bond. SBA notifies its field offices of bond forms deemed by SBA to be unreasonable in light of these criteria.

(d) *Persons Eligible to Represent Surety Before SBA.* SBA shall accept surety bond guarantee applications only from those representatives of a surety who are empowered in writing by the surety to issue a final bid, payment, or performance bond on behalf of the surety.

(e) SBA's guarantee is valid only when the work under the contract is not yet begun, except where expressly authorized in writing by the Regional Administrator.

§ 115.3 Definitions.

This section incorporates those terms defined at 15 U.S.C. § 694a and defines the additional terms set forth below:

(a) "SBA" and "Administration" shall mean the Small Business Administration.

(b) "Surety" means (1) a surety company listed by the U.S. Treasury as eligible to issue bonds in connection with Federal procurement contracts or (2) a corporation determined by SBA to be a surety eligible to participate in the Surety Bond Guarantee Progam, or (3) an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

(c) "Loss" means all damages, court costs, counsel fees, charges, and expenses which the surety has incurred and actually paid as a result of having executed the bond or bonds guaranteed by SBA, less those amounts recovered at the time of payment by the surety company. "Loss" shall not include and SBA's guarantee does not extend to attorneys' fees and court costs incurred in a suit by a surety against SBA.

§ 115.4 Eligiblity.

In order to be eligible for a surety bond guarantee, the principal must:

(a) Qualify as a small business under § 121.3–15 of this chapter.

(b) Possess good character and reputation, as determined by SBA. A principal will be deemed to meet this standard if its owners, officers, directors, or partners possess good character and reputation.

(c) Certify that a bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor thereon.

(d) Certify that a bond is not obtainable on reasonable terms and conditions without SBA's bond guarantee assistance.

§ 115.5 Procedure for surety bond guarantee assistance.

(a) Application for an SBA guarantee is made by the principal to an agent or broker on the SBA Application for Surety Bond Assistance (Form 994), and the Schedule of Contractor's Uncompleted Work (Form 994F). The contractor's application must include disclosure authorization required by Section 1104(a) of the Right to Financial Privacy Act (12 U.S.C. 3404). In addition, completion of SBA's Form 912 is required (on initial application only). The completed application, together with the surety's report of underwriting review (Form 994B), and an executed surety bond guarantee agreement (Form 990), are to be submitted to SBA only by a person empowered by the surety to issue a final bond guaranteed by SBA.

(b) SBA makes no charge for reviewing an application for a surety bond guarantee. Fees are payable both by the contractor and the surety once a final bond has been issued (See § 115.9).

§ 115.6 Guarantee agreement.

(a) *Conditions of Guarantee.* Any Agreement by SBA to guarantee a bond issued by a surety company shall contain the following:

(1) Surety shall represent that the bond or bonds being issued are appropriate to the contract requiring them.

(2) Surety shall represent that the terms and conditions of the bond or bonds executed are in accordance with those generally used by the surety

industry for the type of bond or bonds involved.

(3) Surety shall affirm that without the SBA guarantee to Surety, it will not issue the bond or bonds to the principal.

(4) Surety shall take all steps necessary to mitigate any loss resulting from Principal's default.

(5) Surety shall inform SBA of any suit or claim filed against Surety on any guaranteed bond within thirty (30) days of Surety's receipt of notice thereof in the Surety's home office. Unless SBA decides otherwise, and so notifies Surety within thirty (30) days of SBA's receipt of Surety's notice, Surety shall take charge of the suit or claim and compromise, settle or defend such suit or claim until so notified. SBA shall be bound by the Surety's actions in such matters. SBA may by written notice require the Surety to obtain written SBA approval before any settlement and in such cases the Surety will be liable to SBA for any damages SBA sustains as a result of a settlement which SBA has not approved.

(6) Surety shall not joint SBA in any lawsuit to which Surety is a party unless SBA has denied liability in writing or SBA has consented to such joinder.

(7) Surety shall pay SBA a portion of the bond premium in accordance with § 115.9 of these Regulations.

(8) The guarantee agreement is made exclusively for the benefit of SBA and the Surety, and does not confer any rights or benefits on any other party, including any right of action against SBA by any person claiming under the bond.

(b) *SBA's Right to Vary Terms and Conditions.* The terms and conditions of SBA's guarantee commitment or actual bond guarantee may vary from surety to surety, depending on the Administration's experience with a particular surety. In determining whether the Administration's experience with a surety warrants terms and conditions which may be at variance with terms and conditions applicable to another surety, SBA will consider, among other things, the adequacy of the surety's underwriting, the adequacy of the surety's substantiation and documentation of its claims practice, the surety's loss ratio and its efforts to minimize loss on SBA guaranteed bonds, significant departures from generally accepted surety industry practices, and other factors. Any surety which deems itself adversely affected by the exercise of the foregoing authority may file an appeal with SBA's Associate Administrator for Investment. That office will review the action pursuant to its procedures and will render the final Agency decision.

§ 115.7 Surety's underwriting standard.

In underwriting an SBA guarantee bond, the surety is expected to adhere to the surety industry's general principles and practices used in evaluating the credit, capacity, and character of a principal, taking the SBA guarantee into consideration.

§ 115.8 SBA's underwriting review.

(a) No application for bond guarantee assistance shall be approved unless the following conditions have been met:

(1) The principal must meet the standards of eligibility set forth in § 115.4 of these Regulations, and must satisfy the Administration that there is reasonable expectation that the principal will perform the convenants and conditions of the contract with respect to which a bond is required. The Administration's evaluation will consider the principal's experience and reputation, and its present and projected financial condition and needs.

(2) The Administration must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the contract. The Administration's determination will take into account the standards and principles of the industry referred to in § 115.7.

(3) The bond is either a bid, performance, or payment bond issued in connection with a contract not exceeding $1,000,000 in face value and is the type of bond listed in the "Contract Bonds" section of the Rating Manual of the Surety Association of America. The bond may also be an "ancillary and coterminous" bond which is incidental to the contract and essential to its performance, e.g., a maintenance or union fringe benefit bond.

(b) *Delegation of Authority.* SBA field offices, according to delegated authority as published from time to time in the **Federal Register**, will take final action on all applications on contracts. Field offices, however, may *not* give oral approval to applications. An appeal by a surety for reconsideration of a decline shall be directed to the Regional Administrator/or District Director who made the decision. If the appeal decision is negative, and the surety wishes to pursue its appeal, such further appeal action will be referred to the SBA Central Office for final decision.

§ 115.9 Guarantee fees and surety bond premiums.

(a) *SBA Charge to Applicant.* No application fee and no bid bond guarantee fee will be charged by SBA. Upon obtaining the contract for which SBA is guaranteeing a payment and/or performance bond, the small business concern shall pay SBA a guarantee fee of one-half of one percent (.5%) of the contract amount.

(b) *SBA Charge to Surety.* The surety shall pay SBA a guarentee fee equal to twenty percent (20%) of the bond premium. If there is a subsequent increase in the contract amount and an increase in the face amount of the bond, the surety will remit to SBA a supplemental guarantee fee of 20 percent of the additional premium charged. If the contract amount and bond amount are reduced, SBA will refund 20 percent of the premium reduction. Premium adjustments in favor of SBA or surety which do not amount to more than $10.00 are to be disregarded.

(c) *Surety Bond Premiums.* SBA will deem acceptable a bond premium charged by the surety to a contractor which is based upon:

(1) Rates listed in the "Contract Bonds" section of the "Rating Manual" issued by the Surety Association of America; or

(2) Rates greater than "Rating Manual" rates if—(i) the surety's premium rate schedule does not charge more than 1.5 percent of the contract price, and (ii) these premium rates have been authorized by the appropriate State Insurance Department; or

(3) A minimum bond premium regardless of the contract price, if this minimum charge does not exceed $50 and has been authorized by the appropriate State Insurance Department.

(d) *Non-Premium Charges.* SBA will not approve an application for a bond guarantee where the surety makes any charge above the standard premium for the bond, except where other services are performed for the contractor and the additional charge or fee is permitted by the appropriate State Insurance Department. SBA shall not receive any portion of any non-premium charges.

§ 115.10 Surety bonding line.

A surety bonding line is a commitment to a surety company by the SBA that allows the surety to issue bid, payment, and performance bonds to a specified small contractor within preapproved terms, conditions, and limitations.

(a) *Eligibility.* SBA, in its discretion, may issue a bonding line for a particular principal with a specified surety if SBA's prior experience with the requesting surety has been satisfactory.

(b) *Application for Bonding Line.* When requesting SBA to establish a bonding line for a particular principal, the surety must provide SBA with all of the following:

(1) The appropriate forms required by SBA and any other information deemed

necessary by SBA. The information should be furnished by the principal to the surety.

(2) A recommendation regarding the maximum number of SBA-guaranteed contract bonds the principal may have on hand at any one time.

(3) A recommendation regarding the maximum dollar amount of any one contract the principal may have on hand at any one time.

(4) The recommended total value of all outstanding bids plus uncompleted work (bonded and unbonded) the principal may have on hand at any one time.

(5) A specific type of work to which the principal may be restricted, and

(6) A specific geographic area to which the principal may be limited.

(c) *Establishment of a Bonding Line.* In each case where SBA approves a bonding line for a particular principal, SBA will establish:

(1) The time period during which the authorization is effective;

(2) The total dollar volume of contracts, both bonded and unbonded, which the principal may have on hand or in progress at any one time during the period of authorization;

(3) The total number of contracts, bonded and unbonded, which the principal may have on hand or in progress at any one time during the authorization period;

(4) The maximum dollar amount of any one contract; and

(5) Other restrictions deemed appropriate by SBA relating to geographic area or specific type of work eligible for bid.

(d) *Bonding Line Limitations.* In addition to any limitations of this Part 115 which are generally applicable to the Surety Bond Guarantee Program, the following restrictions apply:

(1) Contracts exceeding $500,000 in face value are not eligible.

(2) The bonding line will be limited to a specified period of time which is not to exceed one year. Upon expiration of the agreed upon period, SBA may, in writing, approve renewal of the time period.

(3) SBA may, in its discretion, set additional limitations and restrictions. The establishment of a surety bonding line for a particular small business concern will not prevent such concern from applying for bond guarantees on contracts exceeding established limits. These limits pertain only to SBA's prequalification for the particular principal under the streamlined procedures. Applications for contracts exceeding the agreed-upon limits may be made under regular Surety Bond Guarantee procedures.

(e) *Terms and Conditions.* In addition to the applicable general provisions set forth in this Part 115, the following terms and conditions shall apply to the surety bonding line:

(1) The surety may issue any number of bid or final bonds (negotiated or bid) within the limitations approved by SBA, and in accordance with these regulations.

(2) Within 30 calendar days of issuance of any final bonds, the surety must notify SBA that the bond or bonds have been issued by submitting the appropriate SBA forms. SBA may determine that the bond guarantee is void from its inception if surety fails to notify SBA in 30 days.

(3) Surety must promptly furnish SBA with all required fees, financial and credit data, indemnities, and other data deemed necessary by SBA.

(4) The principal must agree to indemnify surety for losses on each bond issued.

(5) SBA or the surety may unilaterally cancel a bonding line at any time upon written notice to the other party.

(6) The surety must determine that there is a reasonable expectation that the principal will perform the contract or contracts, and that the contract is reasonable.

§ 115.11 Loss under bond.

(a) *Loss Under Breach of Bond.* Where a breach occurs under an SBA guaranteed bond, SBA is liable for its percentage share of all losses sustained and actually paid by the surety, less the deductible amount in paragraph (b), of this section, except where:

(1) The total contract amount at the time of execution of the bond or bonds exceeds $1,000,000 in face value or

(2) The surety obtained the guarantee or agreement or applied for reimbursement for losses by fraud or material misrepresentation. Material misrepresentation includes both the making of untrue statements of material facts and the omission of statements of material facts which are necessary to make the statements not misleading in light of the circumstances under which they were made. To avoid having committed a fraud or having made a material misrepresentation, the surety must not have known the true facts, and must not have been able to ascertain them in the exercise of reasonable care.

(b) *Deductible Amount.* On any guarantee under a bond, SBA's obligation for loss payment to a surety shall commence after a deductible of the first $500 of loss paid by the surety. (Where the amount of the bond premium received by the surety from the principal, less the guarantee fee paid SBA, is below $500, the deductible may be that amount.) Before sharing pro rata with SBA any proceeds surety recovers from salvage, surety first may credit itself with the amount recovered, up to the deductible amount. For the purpose of such credit, contract proceeds or collateral held by the surety are not be considered as recoveries.

§ 115.12 Refusal to issue further guarantees.

SBA at its sole discretion may refuse to issue further guarantees to a participating surety where the Administration finds that the surety, in its underwriting of surety bonds which are or have been the subject of the SBA guarantee, or in its efforts to minimize loss, or in its claims practices, or in its documentation related to such bonds, has failed to adhere to prudent underwriting standards. SBA may also impose other sanctions against a surety which experiences excessive losses on SBA-guaranteed bonds resulting from unacceptable underwriting and/or claims practices. Any surety which has been so penalized may file an appeal with SBA's Associate Administrator for Investment. That office will review the adverse action pursuant to its procedures and will render the final Agency decision.

§ 115.13 Audit of participating sureties.

At all reasonable times, SBA may audit in the offices of a participating surety all documents, files, books, records, and other material relevant to the Administration's surety bond guarantee commitments to guarantee a surety bond or agreements to indemnify the surety. Failure of a surety to consent to such audit will be grounds for SBA to refuse to issue further surety guarantees until such time as the surety consents to such audit provided, however, that when SBA has so refused to issue further guarantees the surety may appeal such action to SBA's Associate Administrator for Investment.

(Catalog of Federal Domestic Assistance Program No. 59.016, Bond Guarantee Assistance for Surety Companies)

Dated: December 17, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-40305 Filed 12-23-80; 8:45 am]

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CIVIL AERONAUTICS BOARD

14 CFR Part 241

[FDR-417; Economic Regulations Docket 39077]

Uniform System of Accounts and Reports for Certificated Air Carriers; Reductions in Reporting Requirements for Certificated Air Carriers

Dated: December 18, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB is inviting public comment on a proposal to reduce financial and statistical reporting requirements contained in the Board's largest information system, the CAB Form 41 Report. This proposal would reduce reporting for all air carriers holding a certificate of public convenience and necessity.

DATES: Comments by: February 23, 1981. Reply Comments by: March 10, 1981.

Comments and other relevant information received after this date will be considered by the Board to the extent practicable.

Requests to be put on the Service List by: January 8, 1981.

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on the others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 39077, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand or J. T. Curry, Data Requirements Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION: In late 1979, the CAB began a comprehensive review of its existing information systems. An Information Planning Project Team was formed to conduct detailed reviews of existing systems and forward recommendations to a Policy Steering Committee which modified or approved the recommendations of the Project Team. As each review of an information system was completed, the Board was informed of the result.

The first tangible results of the review project were achieved with the adoption of ER-1188 on July 17, 1980. ER-1188 eliminated ten report schedules from the CAB Form 41 Report and eliminated requirements to file six Accounting Plans that were used to describe the procedures and methodologies air carriers employed in preparing reports filed with the CAB. In addition, ER-1188 amended monthly financial reporting and introduced a new schedule for reporting market statistics.

As a second step, this proposal follows on ER-1188 and two separate reports that were forwarded to the Board by the Information Planning Project Team on June 2, 1980. The recommendations in those reports have been embodied in this rulemaking notice and are discussed under the captions that follow.

Groupings for Certificated Carriers

Currently, accounting and reporting requirements contained in Part 241 (14 CFR Part 241) are scaled to carrier size with large carriers maintaining more detailed records and reporting more detailed data than medium-sized carriers who, in turn, maintain and report more than carriers who are still smaller. The current boundaries for dividing air carriers into three groups were established in 1977 at annual operating revenue levels of $25 million and $75 million. The calendar year ended December 31, 1975, was used as the base year and carriers do not automatically move from group to group as their revenues change. Instead, the regulation provides for periodic reviews and reclassifications as they become necessary.

Since 1975, carrier growth and inflation have increased operating revenues dramatically; but no action has been taken to reclassify carriers among existing groups. As a result, the Board's "scaled to size" approach to obtaining industry data for decision-making purposes is growing outdated. In some instances, carriers of approximately the same size are subject to different reporting requirements.

We are, therefore, proposing to revise the revenue boundaries upward to reflect industry revenue growth and the effects of inflation. We are proposing to raise the annual operating revenue boundary for small carriers from $25 million to $75 million and the boundary for medium-sized carriers from $75 million to $200 million using the year ended December 31, 1979, as a base year.

Under this realignment, no air carrier would have its reporting upgraded to a more burdensome level and Airlift International, Capitol International Airways, and Southwest Airlines would be recategorized as Group II air carriers and subject to less burdensome requirements by virtue of their 1979 operating revenues.

The new revenue boundaries would relieve many carriers of the fear of becoming subject to more burdensome reporting as a result of normal growth. Further, it will eliminate the normal questions which arise when governmentally applied standards do not keep abreast of changing developments and produce uneven results. In this case the uneven result occurs when carriers of approximately the same size are subject to substantially different requirements for no purpose.

We are also proposing to establish a separate subgroup of small unsubsidized carriers with operating revenues below $10 million. These carriers would be subject to a newly formulated minimum level of reporting which will enable the Board to provide additional financial and statistical reporting relief to the smallest air carriers. The new subgroup and the new minimum reporting level are being established for three reasons. First, the operations of these carriers do not ordinarily have a material impact in analyzing industry results. Second, it is consistent with the intent of the Regulatory Flexibility Act (Pub. L. 96-354). Third, it puts into motion a low burden reporting system that may prove to be the answer to data needs that will extend beyond sunset.

Before turning to a more detailed explanation of the newly formulated minimum level of reporting that would apply to the smallest certificated carriers, it would be appropriate to discuss the major reporting burden reductions that would move other carriers closer to the new minimum level.

Elimination of Certain Schedules

The proposed amendments would eliminate ten CAB Form 41 schedules in addition to the ten which have already been eliminated by ER-1188. The Information Planning Project Team recommended that the following schedules be eliminated.

Schedule	Title
A-2	Controlling Person's Certification.
B-7(a)	Reinvestment of Flight Equipment Capital Gains.
B-8(a)	Flight Equipment Capital Gains Invested or Deposited for Reinvestment in Flight Equipment.
P-1.1	Statement of Operations—Group I Air Carriers.
P-2(a)	Revenue Market Report.
P-3.1	Transport Revenues.
P-5.1	Aircraft Operating Expenses.
P-12	Fuel Inventories and Consumption.
T-3.1	Statement of Traffic and Capacity Statistics.
T-7	Statistical Market Report.

Schedule A–2 serves as the certification sheet for another form, Schedule B–46 that is filed by persons controlling an air carrier (as persons controlling an air carrier are defined in Part 241 for reporting purposes). We are proposing to elimate Schedule A–2 because it contains no substantive information, only the signature of the person controlling an air carrier or a designated representative certifying to the accuracy of data contained on Schedule B–46.

We are also taking this opportunity to relieve "controlling persons" from filing Schedule B–46. Reporting by "controlling persons" was originally institute in Part 241 to standardize and improve disclosure of data on persons and firms that exert a control influence over air carriers. This reporting has not succeeded in meeting its original objective for a variety of reasons but mainly because it is a requirement directed to noncarrier respondents in a body of regulations (14 CFR Part 241) directed to air carrier respondents. This reporting by controlling persons on Schedule B–46 does not have a high priority in relation to the main thrust of the CAB Form 41 Report, is of doubtful value and would not be missed.

Schedules B–7(a) and B–8(a) have been used in conjuction with 14 CFR Part 235 to administer the provisions of Section 406(d) of the Federal Aviation Act. Section 406(d) prevents the Board from reducing air carrier subsidy by the amount of capital gains received on the sale of flight equipment when the gains are reinvested in flight equipment or used to retire debt incurred to purchase flight equipment and appropriate notice has been given to the Board.

We believe Schedules B–7(a) and B–8(a) are unnecessary because (1) it is very unlikely that a carrier would not reinvest gains on flight equipment within the two years provided in 14 CFR Part 235 and (2) there are other Form 41 schedules that provide the information needed to monitor flight equipment gains and flight equipment purchases. Among them are Schedules B–7, "Airframes and Aircraft Engines Acquired" and Schedule B–8, "Property and Equipment Retired".

The Board uses two different income statement schedules, one for smaller Group I carriers (Schedule P–1.1) and another for larger Group II and Group III carriers (Schedule P–1.2).

When the two schedule approach was originally developed, the differences between Schedule P–1.1 and its partner Schedule P–1.2 were more pronounced than they are today. Over the past decade, as accounting and disclosure standards desired by the American business community have changed, more line items have been added to both schedules to disclose the impact of extraordinary items, prior period adjustments, the effects of changes in accounting principles and the like. Today, there is little difference between the two schedules and we believe that by modifying Schedule P–1.2 to accommodate the smaller carriers, we can eliminate Schedule P–1.1 in its present form. As will be discussed in later paragraphs, we plan to use the schedule number for a new statement of operations for smallest carriers, those with annual revenues below $10 million.

Schedule P–2(a) provides details on revenues generated in specific markets. It has proven useful in analyzing markets in the past but this usefulness has diminished and there seems little reason to sustain it and its companion Schedule T–7, "Statistical Market Report" as recurrent filings. To the extent the information on this schedule is needed at various times, it can be obtained on an *ad hoc* basis.

Schedule P–3.1 is now filed by charter carriers. Its main function is to break down charter revenue between civilian and military revenues and military revenues again by aircraft type. In ER–1134, adopted July 19, 1979, the Board terminated its role in setting military rates and there is no longer a need for most of the detail contained in Schedule P–3.1.

Like Schedules P–1.1 and P–1.2, the CAB uses two schedules, for reporting aircraft operating expenses. Small carriers file Schedule P–5.1 and medium sized and larger carriers file Schedule P–5.2.

The use of two schedules is a by-product of the system of accounts the Board prescribes for air carriers which scales the level of accounting detail to carrier size. Schedule P–5.1 is filed by smaller carriers and contains slightly less detail than Schedule P–5.2.

We are proposing to modify the format of Schedule P–5.2 to condense the expense reporting on that schedule. We would then eliminate Schedule P–5.1 in its present form and use this schedule number for a new schedule to be filed by the smallest carriers, those with annual revenues below $10 million.

Schedules P–12 and P–12(a) are filed by all air carriers each month. Both schedules contain fuel cost data and, as a result, are often thought of as being interdependant. This, however, is not the case. Schedule P–12(a) receives extensive use for a wide variety of costing and analytical purposes inside and outside the Board. In contrast, Schedule P–12 has fallen into disuse and we are proposing to eliminate it from the CAB Form 41 Report.

While the Board is proposing to eliminate Schedule P–12, the carriers should remain mindful that the schedule has considerable value during shortage periods and that the Board would not hesitate to reimpose an inventory oriented report like Schedule P–12 if it becomes necessary at some future time.

Schedule T–3.1, "Statement of Traffic and Capacity Statistics" is filed by those carriers who have been traditionally categorized as charter carriers. Since the enactment of the Airline Deregulation Act of 1978, more and more of these carriers have begun scheduled service operations. Schedule T–3.1 does not adequately reflect this transition. Because of this, we are proposing to eliminate this schedule and have the carriers who have traditionally been considered charter carriers report statistical data on the same schedules that are used by other carriers.

Other Reductions

The proposed rule would limit the applicability of Schedules B–10 and P–4 to carriers receiving Section 406 subsidy. Schedule B–10, "Unamortized Developmental and Preoperating Costs" discloses the accumulated costs of developmental and preoperating projects that have been recorded as deferred assets. In addition to disclosing the dollars accumulated on each project, it discloses the dollar amounts amortized to expense during a calendar quarter.

Schedule P–4 is divided into three sections. The first section discloses gross revenues, gross expenses, and net income from operations that are incidental adjuncts of the air transportation services performed by air carriers. In-flight liquor sales, rents, and interchange sales are but a few examples. The other two sections of the schedule provide space for carriers to explain in detail certain types of accounting adjustments that have entered into the determination of net income during a calendar quarter.

There appears to be no pressing need for either of these schedules from unsubsidized carriers.

For carriers with 1979 revenues below $75 million, the proposed rule would eliminate Schedule B–3, "Statement of Changes in Stockholder Equity". In addition, it would relieve small carriers who are not receiving Section 406 subsidy from filing Schedule B–7, "Airframes and Aircraft Engines Acquired" and Schedule B–8, "Property and Equipment".

In addition to the other changes that are being made, we plan to relieve

carriers from having to complete the bottom portion of Schedule P–3(a), "Income Taxes; Memorandum Allocation of Income Taxes". In the bottom portion of this schedule, income taxes and investment tax credits are allocated between (1) operating profit or loss and (2) nonoperating income and expense. Allocations are made on the basis of the proportion of operating and nonoperating income to the total of both, after adjustments for interest expense.

This portion of the schedule is no longer essential for regulatory purposes and the schedule itself and the reporting instructions will be amended accordingly.

Changes in Reporting of Traffic and Capacity Statistics

We are also making an effort to reduce the number of statistical schedules that medium-sized and larger air carriers file. Changes in statistical reporting would involve four steps. First, the proposal would combine current monthly Schedules T–1(a), T–1(b) and T–1(c) into a new monthly Schedule T–1. Second, quarterly Schedules T–2(a) and T–2(b) would combine into a new quarterly Schedule T–2. Third, quarterly Schedules T–3(a), T–3(b) and T–3(c) would be consolidated into new quarterly Schedules T–3(a) and T–3(b). Finally, as indicated earlier, Schedule T–3.1 for charter carriers would be eliminated. The changes would be accomplished mainly by combining service classes, and dropping or combining individual data elements.

These actions would result in a net reduction of five statistical schedules from the CAB Form 41 Report.

While this would result in a substantial reduction, we are aware that many carriers with established data processing routines may find it less burdensome to continue the present reporting requirements rather than switch to more condensed statistical reporting. Those carriers who would take this position should make a good case tht the costs associated with the changeover would be more burdensome.

Minimum Reporting Requirements for Smallest Certificated Carriers

As was discussed earlier, this proposal would introduce minimum reporting requirements for air carriers with annual operating revenues below $10 million, who do not receive Section 406 subsidy payments.

For these carriers, financial reporting would consist of a balance sheet, a statement of operations (income statement), a statement of aircraft operating expenses, an annual aircraft inventory report, and the monthly Schedule P–1(a), "Interim Operations Report," which was recently adopted in ER–1188. All of these schedules, except Schedule P–1(a), are condensed versions of similar schedules required from larger carriers.

The four new schedules would designate Schedule B–1.1, "Balance Sheet for Small Air Carriers," Schedule B–43.1, "Aircraft Inventory Data—Small Air Carriers," Schedule P–1.1, "Statement of Operations for Small Air Carriers," and Schedule P–5.1, "Statement of Aircraft Operating Expenses for Small Air Carriers".

The balance sheet, the statement of operations, and the statement of aircraft operating expenses will be filed semiannually rather than quarterly.

Statistics would be reported on a new Schedule T–2.1, "Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Aircraft Type" which would be filed quarterly. These carriers would also continue to file new Schedule T–9, "Nonstop Market Report" that was adopted in ER–1188, but this too would be on a quarterly basis.

For small certificated carriers, the minimum level of reporting being established in this rulemaking represents a significant decrease in reporting burdens. For example, under current regulations an unsubsidized Group I air carrier would be required to file 25 CAB Form 41 schedules with varying frequencies. All told, 117 schedules would be submitted to the Board each year. Under the proposed minimum for unsubsidized carriers with revenues below $10 million, the same carrier would be required to file seven CAB Form 41 schedules with varying frequencies. Each year 39 schedules would be submitted to the Board. This proposed rule would mean a 66 percent decrease for these carriers in the number of schedules filed annually.

We anticipate that the Board would not be hurt by any loss of data and the carriers would benefit greatly.

Changes in Reporting All-Cargo Operations

When Public Law 95–163 was enacted and domestic cargo operations were deregulated, a new schedule was introduced into the CAB Form 41 Report, and CAB Form 242, "Report of Scheduled All-Cargo Services" was eliminated. In addition, certified carriers were relieved from submitting service segment data for all-cargo operations. Since November 1978 the Board has been petitioned for more reporting and for less reporting on domestic cargo operations.[1]

Based on the experience we have obtained from the new Schedule T–8, "Report of Section 418 Operations," which was introduced into the CAB Form 41 Report in 1979, we have decided to proposed an amendment to the schedule and the applicable reporting instructions.

The change being proposed would make the Schedule T–8 a report of all-cargo aircraft operations with separate columns for (a) all-cargo aircraft operations within the geographic limitations of Section 418 certificates and (b) all remaining all-cargo aircraft operations. This new format would yield data that is more useful to the Board than what is presented in the current format and should not prove to be any more burdensome for the carriers than the current reporting.

In this rulemaking, we will not eliminate the reporting of belly-cargo data in service segment data as American has petitioned in Docket 35388. American claimed that reporting of belly-cargo data places them at a competitive disadvantage with all-cargo carriers that are not required to file service segment data.

Although American's complaint about a competitive disadvantage has some merit, we have not found American's concern to be widespread. Despite adoption in 1978 of a rule allowing carriers to discontinue reporting all-cargo service segment data, only two carriers (American and United) have stopped submitting it. The others apparently find the problem of disclosure to be less than the effort required to develop new automatic data processing programs to delete these data from their reports.

We believe, as will be more fully described in an order to follow, that belly-freight information is needed to properly analyze passenger operations. Moreover, we believe that once the Schedule T–8 has been modified, adequate periodic reporting will be achieved and that any additional data that is needed can be obtained on an *ad hoc* basis.

Other Changes

This rulemaking proposes full entity reporting for charter carriers which will distinguish between domestic and

[1] The Air Freight Forwarders Association petitioned the Board to initiate rulemaking to require reports on inbound and outbound cargo by station from both air freight forwarders and direct air carriers (Docket 36544) and American Airlines petitioned the Board to eliminate reporting of belly-freight data in passenger/cargo service segment reports (Docket 35388).

international operations. This proposal reflects the fact that many charter carriers are now engaged in scheduled service. As the proportion of scheduled service operations continue to grow for carriers that have traditionally been charter carriers, we see little continuing reason to treat them differently than other scheduled service carriers who also conduct charter operations.

Listings of air carriers appear in two places in Part 241 of the Economic Regulations. They appear in Section 04 classified by Group and again in Section 21 with an identification of the reporting entities (Atlantic, Pacific, Latin America, etc.) established for each carrier.

With today's regulated environment, the listings require more frequent modifications than are possible with amendments of Part 241. The proposed rule would delete both listings of air carriers from Part 241. In lieu thereof, the Office of the Comptroller would issue updated listings on a semiannual basis or more frequently if it becomes necessary.

Finally, in another matter that involves both financial and statistical reporting, the regulations would be amended to delete instructions to report as one aircraft type, all aircraft types with gross take-off weights of 12,500 pounds or less. Instead, the reporting requirements will direct carriers to comply with aircraft types prescribed in the Board's *Manual of ADP Instructions, Outputs, Codes and Related Materials*, as amended.

Proposed Rule

The Board proposes to amend Part 241, Uniform System of Accounts and Reports for Certificated Air Carriers (14 CFR Part 241) as follows:

Section 4—[Removed]

1. The Table of Contents would be amended by revoking and reserving line 04 now entitled *Air Carrier Groupings and Standard Name Abbreviations.*

2. Section 04, entitled *Air Carrier Groupings and Standard Name Abbreviations* would be revoked and reserved.

3. Section 21, entitled *Introduction to system of reports* would be amended by:

Section 21—Introduction to System of Reports

A. Revising paragraph (h) to read:

* * * * *

(h) Two separate entities shall be established for air carriers predominantly engaged in conducting charter activities for the purpose of submitting the prescribed reports. These are (1) domestic operations and (2) international operations. The domestic entity will embrace all operations within and between the 50 states of the United States and the Commonwealth of Puerto Rico, and the United States Virgin Islands. All other operations will be considered international.

B. Deleting the list of air carriers from paragraph (i) and revising paragraph (i) to read:

* * * * *

(i) The entities for which separate reports shall be made by the different route and charter air carriers shall be promulgated semiannually by the Office of the Comptroller of the Civil Aeronautics Board.

Section 22—[Amended]

4. Section 22 General reporting instructions would be amended by:

A. Revising the list of schedules in CAB Form 41 Report to read:

List of Schedules in CAB Form 41 Report

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
A	Certification	Q	(1)	X	X
B-1	Balance sheet	Q	(1)	X	X
B-1.1	Balance sheet for small air carriers	S-A	(2)		
B-3	Statement of changes in stockholder equity.	Q		X	X
B-5	Property and equipment	Q	(3)	(3)	(3)
B-7	Airframes and aircraft engines acquired	Q		X	X
B-7(b)	Flight equipment acquired	Q	(3)	(3)	(3)
B-8	Property and equipment retired	Q	(3)	X	X
B-10	Unamortized developmental and preoperating costs.	Q	(3)	(3)	(3)
B-12	Statement of changes in financial position	Q	(1)	X	X
B-13	Summary of projected financial commitments and related deposits.	Q	(3)	X	X
B-41	Receivables, payables and investments relating to affiliates and other investment data.	A	(1)	X	X
B-43	Inventory of airframes and aircraft engines.	A	(1)	X	X
B-43.1	Aircraft inventory date—small air carriers	A	(3)		
B-46	Long-term and short-term nontrade debt	A	(3)	(3)	X
P-1.1	Statement of operations for small air carriers.	S-A	(2)		
P-1.2	Statement of operations	Q	(1)	X	X
P-1(a)	Interim operations report	M	X	X	X
P-2	Notes to CAB form 41 report	Q	(1)	X	X
P-3	Transport revenues depreciation and amortization; nonoperating income and expenses (net).	Q	(1)	X	X
P-3(a)	Income taxes	Q			
P-4	Transport-related revenues and expenses; explanation of extraordinary items and cumulative effect of accounting changes on prior years; explanation of prior period adjustments and dividends declared.	Q	(3)	(3)	(3)
P-5.1	Statement of aircraft operating expenses for small carriers.	S-A	(2)		
P-5.2	Aircraft operating expenses	Q	(1)	X	X
P-5(a)	Components of flight equipment depreciation.	Q	(3)	(3)	(3)
P-6	Maintenance, passenger service and general and administrative expense functions.	Q	(1)	X	X
P-7	Aircraft and traffic servicing, and promotion and sales expense functions—group II and group III air carriers.	Q		X	X
P-8	Aircraft and traffic servicing, and promotion and sales expense subfunctions—group III air carriers.	Q			X
P-10	Employment statistics by labor category	A	(1)	X	X
P-12(a)	Fuel consumption by type of service and specific operational markets.	M	(1)	X	X
T-1	Traffic and capacity statistics by class of service.	M		X	X
T-2	Traffic, capacity, aircraft operations and miscellaneous statistics by type of aircraft.	Q		X	X
T-2.1	Traffic, capacity, aircraft operations and miscellaneous statistics by aircraft type.	Q	X		
T-3(a)	Airport activity statistics scheduled and nonscheduled revenue service.	Q		X	X

List of Schedules in CAB Form 41 Report—Continued

Schedule No.	Title	Filing frequency	Applicability by carrier group I	II	III
T-3(b)	Airport activity statistics revenue service	Q		X	X
T-6	Report of civil aircraft charters	Q	(5)	(5)	X
T-8	Report of all-cargo operations	S-A	(6)	(6)	(6)
T-9	Nonstop market report	M		(4)	
T-9	Nonstop market report	Q	(4)		
G-41	Persons holding more than 5 per centum of respondent's capital stock.	A	(1)	X	X

M = Monthly.
Q = Quarterly.
S-A = Semiannually.
A = Annually.
X—All carriers.

[1] Applicable to Group I air carriers receiving Section 406 subsidy and Group I air carriers with annual revenues of $10 million or more.
[2] Applicable to Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.
[4] Applicable only to air carriers receiving Section 406 subsidy.
[4] Applicable to air carriers who do not receive Section 406 subsidy.
[5] Applicable to charter carriers.
[6] Applicable to carriers conducting all-cargo operations.

B. Revising the list of due dates in CAB Form 41 Report to read:

Due Dates of Schedules in CAB Form 41 Report

Due dates [1]	Schedule No.
Jan. 20	P-12(a)
Jan. 30	P-1(a), T-1 T-2, T-2.1, T-3, T-6, T-9
Feb. 10 [2]	A, B-1, B-1.1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1.1, P-1.2, P-2, P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-10
Feb. 20	P-12(a)
Mar. 1	P-1(a), T-1, T-9
Mar. 20	P-12(a)
Mar. 30	B-41, B-43, B-43.1, B-46, P-1(a), G-41, T-1, T-8, T-9
Apr. 20	P-12(a)
Apr. 30	P-1(a), T-1, T-2, T-2.1, T-3, T-6, T-9
May 10	A, B-1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1.2, P-2, P-3, P-3(a), P-4, P-5.2, P-5(a), P-6, P-7, P-8
May 20	P-12(a)
May 30	P-1(a), T-1, T-9
June 20	P-12(a)
June 30	P-1(a), T-1, T-9
July 20	P-12(a)
July 30	P-P-1(a), T-1, T-2, T-2.1, T-3, T-6, T-9
Aug. 10	A, B-1, B-1.1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1.1, P-1.2, P-2, P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, T-8
Aug. 20	P-12(a)
Aug. 30	P-1(a), T-1, T-9
Sep. 20	P-12(a)
Sep. 30	P-1(a), T-1, T-9
Oct. 20	P-12(a)
Oct. 30	P-1(a), T-1, T-2, T-2.1, T-3, T-6, T-9
Nov. 10	A, B-1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1.2, P-2, P-3, P-3(a), P-4, P-5.2, P-5(a), P-6, P-7, P-8
Nov. 20	P-12(a)
Nov. 30	P-1(a), T-1, T-9
Dec. 20	P-12(a)
Dec. 30	P-1(a), T-1, T-9

[1] Due dates falling on a Saturday, Sunday or national holiday will become effective the first following work day.
[2] B and P reporting due dates are extended to March 30, if preliminary schedules are filed at the Board by February 10.

C. Revising paragraph (e) to read:

(e) All financial data reported on B, P and G schedules shall reflect the status of the air carrier's books of account for the period for which the report is being made and shall conform to the intructions contained in this Uniform Systems of Accounts and Reports. At the option of the air carrier, Group III air carriers may round reported financial data to the nearest thousands of dollars by typing "($000)" at the top of each amount column. All Group I and Group II air carriers may, at their option, round reported financial data to the nearest whole dollars by dropping the cents. All rounded amounts must be balanced within and between schedules.

Section 23—[Amended]

5. Section 23 *Certification and Balance Sheet Elements* would be amended by:

A. Revoking the title and reporting instructions for Schedule A–2, *Controlling Person's Certification.*

B. Revising paragraph (a) of the reporting instructions for Schedule B–1 to read:

Schedule B–1—Balance Sheet

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

C. Adding an account title and reporting instructions for a new Schedule B–1.1 immediately following the reporting instructions for Schedule B–1 to read:

Schedule B–1.1—Balance Sheet for Small Carriers

(a) This schedule shall be filed semiannually by Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.

(b) This schedule shall show the account balances at the close of business on the last day of each reporting period.

(c) "Current Assets" shall include all resources that may reasonably be expected to be realized in cash or sold or consumed within one year. This group of assets is classified into three basic accounts:

(1) "Cash and Equivalents" shall include cash on hand and on deposit, U.S. Government securities and other temporary cash investments.

(2) "Notes and Accounts Receivable—Net" shall include general traffic accounts receivable, government receivables, notes and receivables from associated companies, officers, employees and others and a deduction for a reasonable allowance for bad debts.

(3) "Other Current Assets" shall contain all other current assets not provided for in the above classification. This account shall include, but is not limited to short term prepayments, spare parts, supplies and other inventories of flight equipment replacement parts that are usually replaced rather than repaired and materials and supplies held in stock such as fuel and oil, expendable tools, office supplies and food service supplies. Spare parts should be reduced by an allowance for obsolescence to provide for losses in value.

(d) "Property and Equipment" shall be segregated into that which is owned and that which is leased under capital leases. All property and equipment, with the exception of land, shall be reported net of accumulated depreciation or amortization.

(e) "Other Assets" shall include all assets not included in the above categories, sich as long-term investments, long-term prepayments, long-term receivables, land, deferred charges, intangible assets, equipment purchase deposits and construction work in progress.

(f) "Current Liabilities" shall include all obligations, the liquidation of which is reasonably expected to require the use of existing resources within one year. This group of liabilities is classified into three basic accounts:

(1) "Notes and Accounts Payable" shall include any payments on long-term debt, short-term notes and accounts payable and accrued expenses that are payable within one year.

(2) "Accrued Taxes" shall include tax liabilities such as those imposed on income, property and payroll, which are reasonably expected to be liquidated within one year.

(3) "Other Current Liabilities" shall include all current liabilities which are not provided for elsewhere, such as air traffic liabilities for unused transportation sold (includes sales of transportation on both the reporting carrier and other carriers.)

(g) "Long-Term Debt" shall include all obligations which are not reasonably expected to be liquidated within one year. Typical examples include bonds payable, long-term notes payable, lease obligations, and pension obligations.

(h) "Other Liabilities" shall include any debts or obligations which are not properly listed in the "Current Liabilities" or "Long-Term Debt" sections.

(i) "Deferred Credits" shall include all credit balances of a general clearing nature, including credits held in suspense pending receipt of further information necessary for final disposition. Included in this account are deferred income taxes and deferred investment tax credits.

(j) "Stockholder's Equity" shall be reported as follows:

(1) "Capital Stock" shall be segregated as between common and preferred. The number of shares outstanding, along with the par or stated value of the stock, shall be reported. In the case of no-par stock without stated value, the full consideration received shall be reported.

(2) "Other Paid-In Capital" shall include the difference between the price at which the capital stock is sold and the par or stated value of the stock.

(3) "Retained Earnings" shall represent the net income or loss from all operations of the corporate entity less dividends.

(4) "Treasury Stock" shall represent the cost of stock issued by the carrier and reaquired by it but not retired or cancelled.

(k) The statement of certification shall be signed by the carrier's chief accounting officer.

All substantive matters that may materially influence interpretations or conclusions in regard to the financial condition or the earnings position of the air carrier which are not clearly identified in the body of the schedule or which represent information that cannot be expressed adequately in monetary terms shall be completely and clearly stated in a note attached to this schedule and cross-referenced to the affected account or accounts. The informative disclosure on this schedule shall conform, at the end of each calendar year, with the footnotes that either have been or would have been prepared for audited financial statements.

D. Revising paragraph (a) of the reporting instructions for Schedule B–3 to read:

Schedule B–3—Statement of Changes in Stockholder Equity

(a) This schedule shall be filled by all Group II and Group III air carriers.

* * * * *

E. Revising paragraph (a) of the reporting instructions for Schedule B–7 to read:

Schedule B–7—Airframes and Aircraft Engines Acquired

(a) This schedule shall be filed by all Group II and Group III air carriers.

* * * * *

F. Revising paragraph (a) of the reporting instructions for Schedule B–7(b) to read:

Schedule B-7(b)—Flight Equipment Acquired

(a) This schedule shall be filed by all carriers receiving Section 406 subsidy.

* * * * *

G. Revoking the title and reporting instructions for Schedule B-7(a)—*Reinvestment of Flight Equipment Capital Gains.*

H. Revoking the title and reporting instructions for Schedule B-8(a)—*Flight Equipment Capital Gains Invested or Deposited for Reinvestment in Flight Equipment.*

I. Revising paragraph (a) of the reporting instructions for Schedule B-10 to read:

Schedule B-10—Unamortized Developmental and Preoperating Costs

(a) This schedule shall be filed by air carriers receiving Section 406 subsidy.

* * * * *

J. Revising paragraph (a) of the reporting instructions for Schedule B-12 to read:

Schedule B-12—Statement of Changes in Financial Position

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

K. Revising paragraph (a) of the reporting instructions for Schedule B-13 to read:

Schedule B-13—Summary of Projected Financial Commitments and Related Deposits

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy.

* * * * *

L. Revising paragraph (a) of the reporting instructions for Schedule B-41 to read:

Schedule B-41—Receivables, Payables and Investments Relating to Affiliates and Other Investment Data

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

M. Reivising paragraph (a) of the reporting instructions for Schedule B-43 to read:

Schedule B-43—Inventory of Airframes and Aircraft Engines

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

N. Adding an account title and reporting instructions for a new Schedule B-43.1 immediately following the reporting instructions for Schedule B-43 to read:

Schedule B-43.1—Aircraft Inventory Data—Small Air Carriers

(a) This schedule shall be filed annually by Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.

(b) The indicated data shall be reported for each individual airframe, identified by type, model, and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Data pertaining to aircraft engines shall be reported on a group basis by type of engine and by type of aircraft to which related.

(c) Data in this schedule shall be grouped and subtotaled as between data pertaining to airframes and data pertaining to aircraft engines. Data pertaining to nonoperating airframes and aircraft engines shall be reported in a group below the data for operating equipment. Data pertaining to airframes and aircraft engines obtained under capital leases shall be reported in a separately captioned grouping below nonoperating airframes and aircraft engines and subgrouped therein according to operating and nonoperating equipment.

(d) The data to be reported shall include owned and capitalized leased airframes and aircraft engines currently in operation or in conversion. Data pertaining to airframes and aircraft engines obtained under capital leases shall be captioned separately from owned equipment.

(e) Column 6 "Acquired Cost or Capitalized Value" shall include (1) the acquisition cost of owned airframes and aircraft engines and (2) the total capitalized cost of obtaining airframes and engines under capital leases.

(f) Column 7 "Allowance for Depreciation or Amortization" shall include (1) the accumulations of all provisions for losses due to use and obsolescence that are applicable to owned airframes and aircraft engines and (2) the amount of amortization recorded for amortizing the value of airframes and engines obtained under capital leases.

(g) Column 8 "Depreciated Cost or Amortized Value" shall reflect (1) Acquired Cost (column 6) less the Allowance for Depreciation (column 7) and (2) Capitalized Value (column 6) less Amortization (column 7).

(h) Column 9 "Estimated Residual Value" shall reflect dollars the residual value assigned to owned and leased airframes and aircraft engines, including any overhaul value not subject to depreciation.

(i) Column 10 "Estimated Depreciable or Amortizable Life (Months)" shall reflect the estimated depreciable or amortizable life of each airfame and each group of aircraft engines.

O. Revising paragraph (a) of the reporting instructions for Schedule B-46 to read:

Schedule B-46—Long-Term and Short-Term Nontrade Debt

(a) This schedule shall be filed by Group III air carriers and Group I air carriers and Group II air carriers that receive Section 406 subsidy.

* * * * *

Section 24—[Amended]

6. Section 24 Profit and Loss Elements would be amended by:

A. Adding separate reporting instructions for a revised Schedule P-1.1 to read:

Schedule P-1.1—Statements of Operations for Small Air Carriers

(a) This schedule shall be filed semiannually by Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.

(b) This schedule shall show the results of operations for six-month periods ending June 30 and December 31.

(c) "Operating Revenue" shall be categorized as follows:

(1) "Transport Revenue" shall include the revenue generated by the performance of air transportation services. This category shall be subdivided as follows:

(*a*) "Scheduled Service" shall include all transport revenue derived from operations between pairs of points which are served on a regularly schedules basis. Transport revenue received from scheduled service operations shall be categorized as follows:

(i) Passengers. Revenue generated from the transportation of passengers shall be included in this category.

(ii) Other. Revenue generated by the transportation of property and mail shall be included in this category.

(*b*) "Nonscheduled Service" shall include all transport revenue derived from operations between pairs of points which are not served on a regulatory scheduled basis.

(2) "Transport-Related Revenue" shall include monies received for providing air transportation facilities associated with the performance of services which flow from and are incidental to air transportation services performed by the air carrier. This category shall be subdivided as follows:

(*a*) Public Service Revenue. This category shall include amounts of compensation paid to the carrier under Section 419 of the Federal Aviation Act.

(*b*) Other. This category shall include other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, interchange sales, and cargo pick-up and delivery charges.

(d) "Operating Expense" shall be segregated as follows:

(1) "Flying Operations" shall include expenses incurred directly in the in-flight operation of aircraft and expenses attaching to the holding of aircraft and aircraft operation personnel in readiness for assignment to an in-flight status.

(2) "Maintenance" shall include all expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation.

(3) "General and Administrative" shall include the portion of all expenses of a general corporate nature and all other expenses not provided for elsewhere which are related to air transport operations either directly or indirectly.

(4) "Depreciation and Amortization" shall include all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services. These expenses shall be segregated between those applicable to owned property and equipment and those applicable to property and equipment which is leased.

(5) "Transport Related Expense" shall include all expenses associated with the transport related revenues reported on line 5 of this schedule.

(e) "Operating Profit (Loss)" shall be computed by subtracting the total operating expenses from the total revenues.

(f) "Nonoperating Income and Expense" shall include all revenues and expenses resulting from commercial ventures which are not inherently related to the performance of air transport services. For example, the revenues and expenses related to operating a hotel or motel would be reported under this category. This category shall also include the total interest expense incurred from all sources and be subdivided as follows:

(1) Interest Expense.

(2) Other Nonoperating (Net).

(g) "Income Tax" shall reflect the provision for accruals of Federal, State, local, and foreign taxes based upon taxable income, and computed at the normal and surtax rates in effect during the current accounting year.

(h) "Discontinued Operations, Extraordinary Items or Accounting Changes" shall reflect any earnings or losses from discontinued operations, the net of the tax amount of extraordinary items, and the cumulative effect of any changes in accounting principles.

B. Establishing separate reporting instructions for Schedule P–1.2 to read:

Schedule P–1.2—Statement of Operations

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

(b) Route and charter carriers shall file separate statements of operations for each separate operating entity and for the overall, or system operations.

(c) [Reserved]

(d) Data reported on this schedule shall conform with the instructions pertaining to profit and loss classifications within this Uniform System of Accounts and Reports.

(e) Data reported in the "12 Months-to-Date" column shall represent for each individual item the sum of amounts reported in the "Quarter" column for the current and next previous three quarters. Data in the "Year-to-Date" column need not be provided when this schedule is not used for submission to the SEC. But when the schedule is used for SEC purposes, data reported in the "Year-to-Date" column shall represent, for the first three quarters of the carrier's fiscal year or calendar year, amounts from the beginning of the carrier's fiscal or calendar year to the end of the quarter for which the schedule is being submitted. For the fourth quarter of the air carrier's fiscal or calendar year, the "Year-to-Date" column should be used for the comparative presentative of data for the prior year.

(f) Earnings per share data shall be filed on a quarterly basis by those air carriers that are required to file such data with the Securities and Exchange Commission.

(g) This schedule has been designed to facilitate the presentation of comparative data for prior periods when used in submissions to the Securities and Exchange Commission.

(h) Any air carrier that does not file Schedule P–1(a) in accordance with the filing option described in Section 22—General Reporting Instructions shall, for the third month of any calendar quarter during which the option is exercised, type in the bottom margin of the system statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P–1(a).

C. Revising paragraphs (a) and (b) and revoking and reserving paragraphs (l) and (m) of the reporting instructions for Schedule P–2 to read:

Schedule P–2—Notes to CAB Form 41 Report

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity and the overall or system operations of the carrier.

(c) All substantive matters * * *

* * * * *

(l) (Reserved)

(m) (Reserved)

* * * * *

D. Revoking the title and reporting instructions for Schedule P–2(a)—*Revenue Market Report*

E. Revoking the title and reporting instructions for Schedule P–3.1—*Transport Revenues*

F. Revising paragraphs (a) and (c) of the reporting instructions for Schedule P–3(a) to read:

Schedule P–3(a)—Income Taxes

(a) This schedule shall be filed by all Group III air carriers.

* * * * *

(c) Report in accounts 91.1 through 93.2, respectively, the amount for each as reflected in the books of account. Accounts 93.7, 93.8 and 93.9 shall reflect income taxes for the current period, income taxes on extraordinary items, and total income taxes, respectively.

G. Revising paragraph (a) of the reporting instructions for Schedule P–4 to read:

Schedule P–4—Transport-Related Revenues and Expenses; Explanation of Extraordinary Items and Cumulative Effect of Accounting Changes in Prior Years; Explanation of Prior Period Adjustments and Dividends Declared

(a) This schedule shall be filed by air carriers receiving Section 406 subsidy.

* * * * *

H. Adding separate reporting instructions for a revised Schedule P–5.1 to read:

Schedule P–5.1—Statement of Aircraft Operating Expenses for Small Air Carriers

(a) This schedule shall be filed semiannually by Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.

(b) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate columns of this schedule, and each aircraft type reported shall be identified at the head of each column in the space provided below "Aircraft Type." "Aircraft Type" refers to aircraft models such as Beech–18, Piper PA–32, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material.* In the space provided for "Aircraft Code" carriers shall insert the four digit code for the aircraft type which are also prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material.*

(c) Direct aircraft operating expenses shall be reported in the following categories:

(1) "Flying Operations" shall include pilots', copilots' and other flight personnel salaries, related employee benefits, pensions, payroll taxes and personnel expenses, and general (hull) insurance.

(2) "Fuel" expense-flight equipment shall include the cost of fuel used in flight operations.

(3) "Oil" expense-flight equipment shall include the cost of oil used in flight operations.

(4) "Maintenance" expense-flight equipment shall include the cost of labor and material expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies and provisions for flight equipment overhauls.

(5) "Depreciation and Rental" expense-flight equipment shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, rental expense and provision for obsolescence and deterioration of spare parts.

(d) Indirect aircraft operating expenses shall be reported in total for all aircraft types only and shall be segregated according to the following categories:

(1) "Traffic Related Expenses" shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

(2) "Capacity Related (Station) Expenses" shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, and related fringe benefit expenses.

(3) "Capacity Related (Other) Expenses" shall include all other operating expenses not included in the above categories.

I. Establishing separate reporting instructions for Schedule P–5.2 to read:

Schedule P–5.2—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity of the air carrier.

(c) Route air carriers shall file this schedule with quarterly data only for the first three quarters of each calendar year and shall file both quarterly and 12 months-to-date data for the period ended December 31. An "x" shall be inserted in the box designated "Qr" at the head of each column of the set covering quarterly data and an "x" shall be inserted in the box designated "Yr" at the head of each column of the set covering 12 months-to-date data.

(c-1) Charter air carriers shall file this schedule for quarterly data only.

(d) Data applicable to each aircraft type operated by the air carrier shall be reported in separate columns of this schedule, and each aircraft type for which report is being made shall be identified at the head of each column in the space provided opposite "Aircraft Type." All aircraft shall be separately reported as distinct aircraft types as established in the *Manual of ADP Instructions, Outputs, Codes and Related Material.* For route air carriers, expenses of operating aircraft provided by other carriers under interchange agreements shall be separately reported in total for all such aircraft as if for a distinct aircraft type. Interchange expenses applicable to aircraft of the same type as those owned or operated by the accounting air carrier shall be distributed in summary memo form as item 98.1 and 98.2 to each aircraft type owned or operated by the accounting air carrier. Aircraft types not generally used in revenue services shall be separatel reported. If more than one type of aircraft is involved, a separation of data relating to each type of aircraft shall not be required.

(e) "Aircraft Type" refers to models such as B–707–100, B–707–300, DC–9–30, etc. "Aircraft Code" refers to a four-digit aircraft code established in the *Manual of ADP Instructions, Outputs, Codes and Related Material.* Data applicable to aircraft designed primarily for cargo services and only incidentally used for passenger services shall be reported in separate columns, and the word "cargo" shall be inserted after the aircraft type at the head of the column. The prescribed reporting by aircraft types may be reviewed from time to time upon requests by individual air carriers, or upon the initiative of the Board, and groupings of aircraft types for reporting purposes may be prescribed or amended in specific instances.

(f) Italicized codes and item titles do not constitute accounts or account numbers prescribed for air carrier accounting but shall be used for reporting purposes only.

(g) Item 79.6 Applied Maintenance Burden shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 Maintenance Burden between maintenance of flight equipment, by aircraft types, and maintenance of ground property and equipment in accordance with item (g) of the instructions for Schedule P–6. The amount reported for this item, in aggregate for all aircraft types, shall agree with the amount reported for the same item reflected on Schedule P–6.

(h) Item 73.1 Current Provisions (for obsolescence and deterioration of flight equipment expendable parts) shall reflect the gross provisions for losses in value of expendable parts during the current accounting period.

(i) Item 73.2 Inventory Decline Credits shall reflect credits applicable to the current period for any adjustments for excess inventory levels determined pursuant to section 6–1311.

(j) The total of function 5100 Flying Operations reported on this schedule shall agree with corresponding amounts reported on Schedule P–1; the total of item 5278 Total Direct Maintenance—Flight Equipment shall agree with the corresponding amount reported in Schedule P–6 and for route air carriers, the total of item 75.6 Total Depreciation—Flight Equipment shall agree with the corresponding amount in Schedule P–3.

(k) Group II and Group III air carriers shall:

(1) Consolidate objective accounts 25.1, 25.2 and 25.3 and report the total of these accounts on line 25.6.

(2) Consolidate objective accounts 42.1, 42.2 and 42.3 and report the total of these accounts on line 42.6.

(3) Consolidate objective accounts 43.1, 43.2 and 43.3 and report the total of these accounts on line 43.6.

(4) Consolidate objective accounts 46.1, 46.2 and 46.3 and report the total of these accounts on line 46.6.

J. Revising paragraphs (a), (b) and (d) of the reporting instructions for Schedule P–6 to read:

Schedule P–6—Maintenance, Passenger Service and General Services and Administration Subfunctions

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity.

* * * * *

(d) Charter air carriers shall file this schedule for quarterly data only.

* * * * *

K. Revising paragraphs (b) and (d) of the reporting instructions for Schedule P–7 to read:

Schedule P–7—Aircraft and Traffic Servicing, Promotion and Sales and General and Administrative Expense Functions

* * * * *

(b) Route and charter air carriers shall file this schedule for each separate entity.

* * * * *

(d) Charter carriers shall file this schedule for quarterly data only.

* * * * *

L. Revising paragraph (b) and (d) of the reporting instructions for Schedule P–8 to read:

Schedule P–8—Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions

* * * * *

(b) Route and charter air carriers shall file this schedule for each separate entity.

* * * * *

(d) Charter air carriers shall file this schedule for quarterly data only.

* * * * *

M. Revising paragraph (a) of the reporting instructions for Schedule P–10 to read:

Schedule P–10—Employment Statistics by Labor Category

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

N. Revoking the title and reporting instructions for Schedule P–12—*Fuel Inventories and Consumption.*

O. Revising paragraph (a) of the reporting instructions for Schedule P–12(a) to read:

Schedule P–12(a)—Fuel Consumption by Type of Service and Specific Operational Markets

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

7. Section 25 Traffic and Capacity Elements would be amended by:

A. Revoking the title and reporting instructions to Schedule T–1(a)—*Traffic and Capacity Statistics by Class of Service,* Schedule T–1(b)—*Traffic and Capacity Statistics by Class of Service—Scheduled Services* and Schedule T–1(c)—*Traffic and Capacity Statistics by Class of Service—Nonscheduled Services*

B. Adding reporting instructions for a new Schedule T–1 to read:

Schedule T–1—Traffic and Capacity Statistics by Class of Service

(a) Schedule T–1 shall be filed monthly by all Group II and Group III air carriers.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) The data shall be compiled as aggregates of the basic data prescribed in Section 19, Uniform Classification of Operating Statistics.

(d) A description of each item and the identifying code shall be given in the left margin, and separate columns shall be used to present data for the following classifications:

(1) Scheduled Combined Passenger-Cargo—the sum of Scheduled First Class Passenger-Cargo Service, Scheduled Coach Passenger-Cargo Service and Scheduled Mixed Passenger-Cargo Service.

(2) Scheduled Cargo Service.

(3) Combined Passenger-Cargo—the sum of Nonscheduled Civilian Passenger-Cargo Service and Nonscheduled Military Passenger-Cargo Service.

(4) Nonscheduled Cargo Service—the sum of Nonscheduled Civilian Cargo Service and Nonscheduled Military Cargo Service.

In addition, columns are provided for total scheduled and total nonscheduled services. The schedule shall include the following items:

Code	Elements
X110	Revenue Passengers Enplaned.
X140	Revenue Passenger-Miles.
X141	First Class.
X142	Coach.
X240	Revenue Ton-Miles.
X241	Passenger.
X243	U.S. Mail (the sum of X243 U.S. Mail—Priority and X244 U.S. Mail—Nonpriority).
X247	Freight (the sum of X245 Foreign Mail, X246 Express and X247 Freight).
X280	Available Ton-Miles.
X320	Available Seat-Miles.
X321	First Class.
X322	Coach.
X410	Revenue Aircraft Miles Flown.
X430	Revenue Aircraft Miles Scheduled.
X431	Scheduled Aircraft Miles Completed.
X510	Revenue Aircraft Departures Performed.
X610	Revenue Aircraft Hours (Airborne).

C. Revoking the title and reporting instructions to Schedule T–2(a)—*Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft* and Schedule T–2(b)—*Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft.*

D. Adding reporting instructions for a new Schedule T–2 following the instructions to Schedule T–1 to read:

Schedule T–2—Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft

(a) Schedule T–2 shall be filed quarterly by all Group III and Group II air carriers.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) The data shall be compiled as aggregates of the basic data prescribed in Section 19, Uniform Classification of Operating Statistics.

(d) A description of each item and the identifying code shall be given in the left margin, and separate columns shall be used for the data applicable to each type of aircraft as identified for reporting purposes by the Civil Aeronautics Board. Aircraft of the same basic structure, but different cabin design shall be classified accordingly as passenger or cargo aircraft types. The schedule shall include the following items:

Code	Elements
	Scheduled Services
	Revenue Passenger-Miles (000).
K141	First Class.
K142	Coach.
	Available Seat-Miles (000).
K321	First Class.
K322	Coach.
K240	Revenue Ton-Miles.
K260	Available Ton-Miles.
K410	Revenue Aircraft Miles Flown.
	Nonscheduled Services
V140	Revenue Passenger-Miles (000).
V320	Available Seat-Miles (000).
V240	Revenue Ton-Miles.

Code	Elements
V280	Available Ton-Miles.
V410	Revenue Aircraft Miles Flown.
	Aircraft Hours Flown—All Services
Z610	Revenue Aircraft Hours (Airborne).
Z650	Total Aircraft Hours (Airborne).
	Miscellaneous Operating Factors
Z810	Aircraft Days Assigned to Service—Carrier's Equipment.
Z820	Aircraft Days Assigned to Service—Carrier's Routes.
Z411	Revenue Aircraft Miles in Scheduled Service Excluding Extra Section.
Z630	Aircraft Hours (Ramp-to-Ramp).
Z921	Aircraft Fuels Issued (gallons).

E. Adding reporting instructions for a new Schedule T–2.1 following the instructions to Schedule T–2 to read:

Schedule T–2.1—Traffic, Capacity, Aircraft Operations, and Miscellaneous Statistics by Type of Aircraft

(a) Schedule T–2.1 shall be filed quarterly by all Group I air carriers.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) The data shall be compiled as aggregates of the basic data prescribed in Section 19, Uniform Classification of Operating Statistics.

(d) A description of each item and the identifying code shall be given in the left margin, and separate columns shall be used as indicated on the schedule for the data applicable to each type of aircraft as identified for reporting purposes by the Civil Aeronautics Board. Aircraft of the same basic structure, but different cabin design shall be classified accordingly as passenger or cargo aircraft types. The schedule shall include the following items:

Code	Elements
	Scheduled Passenger Service
K520	Aircraft Departures Scheduled.
K521	Aircraft Departures Completed.
	Scheduled All-Cargo Service
G210	Cargo Tons Enplaned.
G240	Revenue Ton-Miles.
G280	Available Ton-Miles.
G410	Revenue Aircraft Miles Flown.
G510	Revenue Aircraft Departures Performed.
G630	Revenue Aircraft Hours (Ramp-to-Ramp).
	Nonscheduled Services
V110	Passengers Enplaned.
V210	Cargo Tons Enplaned.
V140	Revenue Passenger-Miles (000).
V320	Available Seat-Miles (000).
V240	Revenue Ton-Miles.
V280	Available Ton-Miles.
V410	Revenue Aircraft Miles Flown.
V510	Revenue Aircraft Departures Performed.
V630	Revenue Aircraft Hours (Ramp-to-Ramp).
	Miscellaneous Operating Factors
Z630	Aircraft Hours (Ramp-to-Ramp).
Z810	Aircraft Days Assigned to Service—Carrier's Equipment.
Z820	Aircraft Days Assigned to Service—Carrier's Routes.
Z921	Aircraft Fuels Issued (gallons).

F. Revoking the title and reporting instructions to Schedule T–3(a)—*Airport Activity Statistics—Revenue Service,* Schedule T–3(b)—*Airport Activity Statistics—Revenue Service,* and Schedule T–3(c)—*Airport Activity Statistics—Nonscheduled Revenue Service.*

G. Adding reporting instructions for new Schedules T–3(a) and T–3(b) following the instructions to Schedule T–2.1 to read:

Schedule T–3(a)—Airport Activity Statistics—Scheduled and Nonscheduled Revenue Service

Schedule T–3(b)—Airport Activity Statistics—Revenue Service

(a) Schedules T–3(a) and T–3(b) shall be filed quarterly by all Group III and Group II air carriers.

(b) Separate schedules shall be filed for each operating entity of the air carriers.

(c) The data shall be compilled as aggregates of the basic data prescribed in Section 19, Uniform Classification of Operating Statistics.

(d) Data shall be given for each on-line and domestic off-line point and for total international off-line points. The air carrier's scheduled certificated authority with respect to each reporting entity shall determine whether a point is on-line or off-line for that entity. Where a point is served by more than one airport, on-line and domestic off-line data pertaining to each airport shall be separately identified. The data relating to on-line points shall be separately grouped and listed in column 1 in alphabetical sequence and the indicated data reported in columns 2 through 14, inclusively. The on-line data shall be totaled. Immediately following the totals for on-line data, the data relating to domestic off-line points shall also be separately grouped and listed in alphabetical sequence in column 1 with the indicated data reported in columns 2 through 14, inclusively. The domestic off-line shall be totaled. Immediately following the totals for domestic off-line data, the totals for international off-line data shall be reported in columns 2 through 14, inclusively. The on-line total and off-line domestic and international data totals will then be added and the sums appropriately noted. The schedule shall include the following items:

Item	Scheduled Service	Nonscheduled Service
Airport code		
Revenue aircraft departures scheduled	K520	
Scheduled revenue departures completed	K521	
Revenue aircraft departures performed—total by aircraft type	K510	V510
Revenue passengers enplaned:	K110	V110
Revenue cargo tons enplaned		
U.S. mail	K213	V213
Freight	K217	V217

Item X213 U.S. Mail shall be comprised of the sum of items X213 U.S. Mail—Priority and X214 U.S. Mail—Nonpriority. The sum of items X215 Foreign Mail, X216 Express and X217 Freight shall be reported as items X217 Freight.

H. Revoking the title and reporting instructions to Schedule T–3.1 *Statement of Traffic and Capacity Statistics.*

I. Revising paragraphs (a), (b), (c) and (d) of the reporting instructions for Schedule T–8 to read:

Schedule T–8—Report of All-Cargo Operations

(a) This schedule shall be filed semiannually by all air carriers holding Section 401 certificates that conduct all-cargo operations.

(b) Data reported on this schedule shall include only results of operations conducted in all-cargo aircraft. Data shall be segregated between domestic all-cargo operations conducted within the geographic limitations of Section 418 certificates and all other all-cargo operations.

(c) "Total Operating Revenue" shall be segregated between transport and transort-related revenues.

(d) Transport revenues shall be subdivided between those generated by scheduled service operations and those generated by nonscheduled service operations. Scheduled service revenues shall be further subdivided between (1) property and (2) mail.

* * * * *

J. Revising paragraphs (a) and (g) of the reporting instructions for Schedule T–9 to read:

Schedule T–9—Nonstop Market Report

(a) This schedule shall be filed quarterly by all unsubsidized Group I air carriers and monthly by all

unsubsidized Group II carriers providing scheduled service and may be used, with the approval of the Director, Office of Economic Analysis, by new entrants and others without Automatic Data Processing capability that would otherwise be required to comply with the requirements of section 19–3.

* * * * *

(g) In column 4, carriers shall disclose the aircraft type used in accordance with four-digit codes established in the *Manual of ADP Instructions, Outputs, Codes, and Related Material.*

* * * * *

8. CAB Form 41 Schedules would be amended as shown in Exhibits A thorugh L.*

(Secs. 204(a), 407 and 1601 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766, 92 Stat. 1744, 49 U.S.C. 1324(a), 1377 and 1551)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–40195 Filed 12–23–80; 8:45 am]

BILLING CODE 6320–01–M

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14 CFR Part 296 and 297

[EDR 416; Economic Regulations Docket 38470]

Air Freight Forwarders and Cooperative Shippers Associations and Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations; Permission for Cooperative Shippers Associations To Act as Agents of Direct Carriers

Dated: December 18, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB is proposing to allow cooperative shippers associations to act as agents of the direct air carriers. This change would put cooperatives on a par with air freight forwarders, and enable them to serve more effectively their shipper members. The notice is in response to a petition for rulemaking by the Air Freight Shippers Cooperative Association of California.

DATES: Comments by: February 2, 1981. Reply comments by: February 23, 1981.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be pub on the Service List by: January 5, 1981.

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of coments should be sent to Docket 38470, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: On July 14, 1980, the Air Freight Shippers Cooperative Association of California (AFSAC) filed a petition for rulemaking to give cooperative shippers associations the authority to act as agents for the airlines. No answers to the petition were filed. One major effect of this proposed authority would be to allow a cooperative to receive a commission from an airline on shipments tendered to the airline if the shipper is notified of this arrangement when the shipment is accepted for transportation by the cooperative. It would also give cooperatives greater flexibility in handling shipments, especially those that are time-sensitive, for their members.

There are three capacities in which an air cargo intermediary may act, each with a different method of compensation and a different relationship to the airline and to the shipper: cargo agents, shipper agents, and common carrier. Cargo agents represent the airline and try to obtain business for it, whether by consolidation or individual shipment. These agents are responsible to and receive a commission from the airline. Shipper agents are paid by the shipper and are responsible to it. The last type of intermediary is fundamentally different from the agents. This type is a common carrier, holding itself out to the public as engaging in the indirect carriage of cargo in air transportation. As a common carrier, it is paid by its customers, shippers, for its transportation. In turn, when giving a shipment, whether consolidated or not, to the airline, it may, as any other cargo customer, be paid by the airline for its services to the airline. The same cargo intermediary may act in different capacities in different transactions under different contracts with the shipper.

Forwarders and cooperatives are two different types of cargo intermediaries: the former for profit, the latter nonprofit. In their capacity as indirect air carriers, they are required to register with the Board and to follow its regulations. Under those regulations, a cooperative shippers association is a nonprofit organization that handles freight of its member shippers and then delivers the shipment to an airline for transportation by air at a discount rate. In most cases, the shipments of member shippers would be consolidated. Airlines generally give price breaks for large shipments over small shipments. The discount given the cooperative for the consolidated shipment is then passed on to its members through its charge formula. The Board's rules (14 CFR 296.6 and 297.6) allow cooperatives and forwarders also to act as agents for shippers. Forwarders, unlike cooperatives, have the option to act as agents for the airlines, charging the airlines' rates instead of their own and receiving commissions from the airlines, instead of payment from the shipper, for their services.

AFSAC argued in its petition that granting cooperatives the authority to act as agents of airlines was overlooked in the Board's deregulation of air freight. AFSAC further argued that this authority would alleviate problems that cooperatives face in competing with air freight forwarders, especially in international markets. It would also allow them to qualify for appointment as cargo agents certified by the International Air Transport Association (IATA) and to participate in IATA activities. The Board agrees tentatively with AFSAC that cooperative shippers associations should also be able to act as agents. This proposed rulemaking applies to U.S. cooperatives, and to foreign cooperatives registered under 14 CFR Part 297.

The Board tentatively believes that AFSAC is right in stating that the marketplace should decide the issue of whom an airline picks as its agent. As AFSAC points out, this action would be in the spirit of increasing competition in cargo air transportation, as industry that is now almost free of government intervention. There thus appears no reason to grant them the authority now to have the same flexibility as forwarders.

The Board is also proposing to extend this authority to foreign cooperative shippers associations under 14 CFR Part 297. The rules for foreign cooperatives are almost identical to those for U.S. cooperatives, and there is no apparent reason to deny them the opportunity to compete on an equal footing. The International Air Transportation Competition Act (P.L. 96–192) has

* Exhibits A through L filed as part of the original document.

stressed that competition is to be a strong factor in the Board's continued regulation of foreign air transportation. The action proposed here would further that goal.

AFSAC asked that the Board order a hearing in this case. The Board is not required to use evidentiary hearing procedures to adopt rules in an informal rulemaking proceeding under 5 U.S.C. 553. The Board will review the factural issues raised in this rulemaking to see if they are of the kind particularly requiring resolution through oral testimony and cross-examination. The issues raised by the AFSAC petition do not appear to be of that kind, however, and do not require a hearing to be resolved. If after public comments have been received, there are not sufficient facts and arguments in the docket, the Board will then decide what further procedures are needed.

Proposed Rule

For these reasons, the Board proposes to amend 14 CFR Parts 296 and 297 as follows:

1. Section 296.6 would be amended to read:

§ 296.6 Cooperative shippers association as agent.

A cooperative shippers association may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A cooperative shippers association shall not act as an agent of any direct air carrier with respect to shipments accepted in its capacity as an indirect air carrier.

2. Section 297.6 would be amended and retitled to read:

§ 297.6 Foreign cooperative shippers association as agent.

A foreign cooperative shippers association may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A cooperative shippers association shall not act as an agent of any direct air carrier with respect to shipments accepted in its capacity as an indirect air carrier.

(Secs. 101(3), 102, 204, 407, 408 and 416 of P.L. 85–726, as amended, 72 Stat. 737, 740, 743, 766, 767, 771; 92 Stat. 1731, 1732; 49 U.S.C. 1301, 1302, 1324, 1377, 1378, 1386)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–40200 Filed 12–23–80; 8:45 am]

BILLING CODE 6320–01–M

14 CFR Part 302

[PDR–57A; Procedural Regulations Docket 33723]

Rules of Practice in Economic Proceedings; Termination of Rulemaking

Dated: December 18, 1980

AGENCY: Civil Aeronautics Board.

ACTION: Termination of Rulemaking Proceeding.

SUMMARY: The CAB terminates a rulemaking proceeding that has become unnecessary since it adopted expedited procedures for licensing cases in another rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Donald H. Horn, Associated General Counsel, Pricing and Entry Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428: 202–673–5205.

SUPPLEMENTARY INFORMATION: This proceeding was instituted at the Board's initiative as PDR–57, 43 FR 50696, October 31, 1978. It sought to amend the Rules of Practice in Economic Proceedings to simplify and expedite procedures for route applications by limiting the time for motions to consolidate or amend the scope of these proceedings. Subsequent to the initiation of this proceeding, the Board adopted Subpart Q of its Rules of Practice (PR–201, 44 FR 24266, April 25, 1979), which sets out expedited procedures for licensing cases. Included in Subpart Q is a provision governing the procedure for motions to consolidate or amend the scope of a proceeding. See 14 CFR § 302.1720(c). The adoption of this procedural rule makes the proposed rule, PDR–57, unnecessary. It will therefore be dismissed.

Accordingly, we terminate the rulemaking proceeding (PDR–57) in Docket 33723.

(Sec. 204 of Pub. L. 85–726, as amended, 72 Stat. 743, 49 U.S.C. 1324)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–40202 Filed 12–23–80; 8:45 am]

BILLING CODE 6320–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 444

Credit Practices; Extension of Post Record Comment Period to January 16, 1981

AGENCY: Federal Trade Commission.

ACTION: Extension of time to file post record comments on Presiding Officer's report and staff report.

SUMMARY: On October 13, 1978 the notice of publication of the Presiding Officer's report on the proposed trade regulation rule was published in the **Federal Register,** 43 FR 47197. On August 22, 1980 notice of publication of the Bureau of Consumer Protection staff report on the proposed rule was published in the **Federal Register,** 45 FR 56070. The latter notice announced the opening of a 60 day comment period on the two reports, setting October 21, 1980 as the deadline for receipt of comments. Subsequently, the Commission extended by 60 days the deadline for comments and requests to participate in an oral presentation before the Commission, 45 FR 66474, October 7, 1980. The Commission has now voted to extend the comment period to January 16, 1981. The deadline for requests to participate in an oral presentation before the Commission has similarly been extended to January 16, 1981.

DATE: The new deadline for comments on the Presiding Officer's and staff reports and for requests to participate in an oral presentation is Friday, January 16, 1981. Comments and requests will be accepted if received on or before this date.

ADDRESSES: Comments and requests to participate in an oral presentation should be sent to: Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580.

Requests for copies of the staff report should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: David H. Williams, (202) 724–1100, or Martin B. White, (202) 724–1157, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Under Rule 1.13(h) of the Commission's Rules of Practice, 16 CFR 1.13(h), interested persons are given sixty days to comment on the staff and Presiding Officer's reports prepared in rulemaking proceedings. In October 1980 the Commission decided to extend this period by sixty days in the Credit Practices rulemaking in response to a request by the staff of the Federal Reserve Board, Division of Consumer and Community Affairs. Now, in response to a request from the National Consumer Finance Association, the Commission has determined that a further extension to January 16, 1981,

will facilitate full consideration of the issues in this proceeding and is in the public interest. Additional information concerning the post record comment period can be found in the **Federal Register** notice of August 22, 1980, 45 FR 56070.

By direction of the Commission.

Loretta **Johnson,**

Acting Secretary.

[FR Doc. 80-40288 Filed 12-23-80; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-176-78]

State and Local Government Deferred Compensation Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to deferred compensation plans maintained by State and local governments and rural electric cooperatives. Changes to the applicable tax law were made by the Revenue Act of 1978. The regulations would provide the public with the guidance needed to comply with that Act, and would affect State and local governments and rural electric cooperatives that maintain deferred compensation plans, and employees whose compensation is deferred under the plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 23, 1981.

The regulations are proposed to be effective for taxable years beginning after December 31, 1978.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T:EE-176-78, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Ray K. Kamikawa of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T:EE-176-78, (202) 566-3422 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 457 of the Internal Revenue Code of 1954, as added by section 131 of the Revenue Act of 1978, Pub. L. 95-600 (92 Stat. 2763). The regulations are to be issued under the authority contained in sections 457 (b) (5) and 7805 of the Code (92 Stat. 2780, 68A Stat. 917; 26 U.S.C. 457 (b) (5), 7805).

Exclusion From Income by Individuals

Under section 131 of the Revenue Act of 1978, employees and independent contractors who provide services for a State or local government or a rural electric cooperative that maintains an eligible deferred compensation plan may exclude from gross income compensation deferred under the plan until it is paid or otherwise made available.

In order to be an eligible plan, the plan must provide that compensation deferred under the plan for any year may not exceed 33⅓% of the participant's includible compensation (in general, gross salary less any amount excludable from gross income) or $7,500, whichever is less. A plan may, however, include a limited "catch-up" provision for any, or all, of the last three taxable years of a participant ending before the participant attains normal retirement age under the plan. Under the catch-up provision, a participant may defer an additional amount equal to any deferral limitations not utilized for prior taxable years in which the participant was eligible to participate under the plan and was subject to the deferral limitations. The amount that can be deferred under the catch-up provision is, however, limited to $15,000.

An individual may be a participant in more than one eligible plan. If an individual participates in two or more plans that are maintained by the same employer, any amount deferred under one plan reduces the amount that may be deferred under another, so that the total deferred under all the plans does not exceed the amount which could be deferred under a single plan. If an individual participates in two or more plans maintained by different employers, the maximum amount excludable from the gross income of the participant for a taxable year on account of amounts deferred under the plans cannot exceed $7,500, or, as applicable, the maximum permitted under the "catch-up" rules.

If a participant in an eligible plan also has amounts contributed by the same employer for the purchase of a tax-sheltered annuity under Code section 403(b), the maximum amount that may be deferred under the eligible plan is reduced by the amount contributed for the purchase of the annuity contract. If the employer contributing amounts for the purchase of the annuity contract and the employer maintaining the eligible plan are different employers, the maximum deferral permitted under the eligible plan is not reduced by the amount contributed for the purchase of the annuity contract. However, the maximum amount excludable from the participant's gross income on account of amounts deferred under the eligible plan of the one employer is reduced to take into account amounts excludable under section 403(b) on account of contributions by the other employer for the purchase of the annuity contract. In general, in any case in which an individual is both a participant in an eligible plan and is an employee for whom amounts are contributed toward the purchase of an annuity contract under section 403(b), the deferral of compensation under the eligible plan will reduce the amount excludable from gross income under section 403(b), without regard to whether it is a single employer or different employers maintaining the eligible plan and contributing amounts for the purchase of the annuity contract.

Additional Plan Requirements

In order to be an eligible plan, the plan may not provide that amounts payable under the plan will be made available to a participant before the participant separates from service or incurs an unforeseeable emergency. An eligible plan is to provide a retirement benefit for the participant. Accordingly, the proposed regulations prescribe rules relating to the period within which amounts deferred under the plan must be paid to the participant. In general, these rules require payment within a period not exceeding the life expectancy of the participant, or the joint lives of the participant and the participant's spouse.

Compensation deferred by a participant under an eligible plan, and earnings on the deferred amounts must remain solely the property of the State until paid to the participant or the participant's beneficiary. However, a participant may select, from among different modes offered under the plan.

Transitional Rules

All plans to which section 457 applies will have until January 1, 1982, to satisfy the requirements for classification as an eligible State deferred compensation plan. However, for taxable years beginning after December 31, 1978, and before January 1, 1982, transitional rules provide that any amount of compensation deferred under a plan of deferred compensation, regardless of whether the plan is an eligible plan, is

excludable from the gross income of the participant until paid or otherwise made available to the participant. However, the maximum amount that may be excluded from gross income for any year is $7,500 or 33⅓% of the participant's includible compensation. Under the transitional rules, increased deferrals under the limited "catch-up" provision are permitted only if the plan is an eligible plan.

Section 457 does not apply to compensation deferred in taxable years beginning before January 1, 1979. Accordingly, whether compensation deferred in such a taxable year is includible in gross income for the year in which deferred, or in any subsequent taxable year, is determined without regard to section 457 and these proposed regulations.

Regular Retirement Plan of a State

If a plan fails to satisfy the requirements necessary for it to be considered an eligible State deferred compensation plan, section 457(e)(1) provides that compensation deferred under such a plan is currently includible in a participant's income for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation. Section 457(e)(2) excludes from this treatment certain plans that are the subject of other Code provisions, *i.e.*, a qualified plan under section 401(a), an annuity plan or contract under section 403, a qualified bond purchase plan described in section 405(a), that portion of any plan which consists of a transfer of property described in section 83, and that portion of any plan which consists of a trust to which section 402(b) applies.

It has been pointed out that there are state plans which are the regular retirement plan of the state but which do not qualify as an eligible State deferred compensation plan under section 457 (b) and which do not come within any of the exceptions to section 457(e)(1) enumerated in section 457(e)(2). For example, there are plans established by states that cover significant numbers of similarly-situated state employees providing normal retirement benefits based on the employee's rate of compensation and payable in the form of an annual annuity at a specified age or ages. Benefits under these plans are payable solely by appropriation by the legislature from the state's general fund. Participants in these plans would appear to be subject to the rules set forth in section 457(e)(1) although it is not clear that this result was intended.

Comments are invited with respect to whether regulations could appropriately be promulgated that would exclude unfunded regular retirement plans for the purposes of sections 457(e)(1) notwithstanding the limited exceptions provided by section 457(e)(2), and, if so, under what circumstances.

Comments and Requests for 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 upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The Principal author of these proposed regulations is Ray K. Kamikawa of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Paragraph (a)(2) of § 1.101–1 is amended by removing "or" at the end of subdivision (i), removing the period at the end of subdivision (ii) and adding in lieu thereof "; or", and by adding a new subdivision (iii) to read as follows:

§ 1.101–1 Exclusion from gross income of proceeds of life insurance contracts payable by reason of death.

(a) * * *

(2) *Cross reference.* * * *

(iii) Under eligible State deferred compensation plans described in section 457(b), see paragraph (c) of § 1.457–1.

* * * * *

Par. 2. Paragraph (b)(2) of § 1.101–2 is amended by removing the period at the end of subdivision (iii) and adding in lieu thereof a semicolon, and by adding a new subdivision (iv) to read as follows:

§ 1.101–2 Employees' death benefits.

* * * * *

(b) * * *

(2) *Cross references.* * * *

(iv) Under eligible State deferred compensation plans described in section 457(b), see paragraph (c) of § 1.457–1.

* * * * *

Par. 3. Paragraph (d)(1) of § 1.403(b)–1 is amended by revising all following subdivision (i) to read as follows:

§ 1.403(b)–1 Taxability of beneficiary under annuity purchased by a section 501(c)(3) organization or public school.

* * * * *

(d) *Exclusion allowance*—(1) *In general.* * * *

(i) * * *

(ii) The aggregate of (*a*) the amounts which have been contributed by the employer for annuity contracts for such employee and which were excludable from the gross income of the employee for any taxable year prior to the taxable year for which the exclusion allowance is being determined, and (*b*) the amounts of compensation excludable from the gross income of the employee under section 457(a) (relating to eligible State deferred compensation plans) for any taxable year that is taken into account as a year of service under paragraph (f) of this section.

Compensation deferred under an eligible State deferred compensation plan shall be taken into account as described in subdivision (ii) of this subparagraph even if the entity sponsoring the eligible plan is not the employer purchasing the annuity contract with respect to which the employee's exclusion allowance is to be determined. See paragraph (e) of this section for the definition of an employee's includible compensation in respect of a taxable year and paragraph (f) of this section for rules for computing an employee's total number of years of service for an employer.

* * * * *

Par. 4. The following new sections are added in the appropriate place.

§ 1.457–1 Compensation deferred under eligible State deferred compensation plans.

(a) *Year of inclusion in gross income*—(1) *In general.* In general, under section 457(a), amounts deferred in taxable years of a participant beginning after December 31, 1978, under an eligible State deferred compensation plan that satisfies the requirements of § 1.457–2 (an "eligible plan") are includible in gross income only for the taxable year in which paid or otherwise made available to the participant or other beneficiary under the plan.

(2) *Maximum deferral; in general.* Under section 457(c)(1), the exclusion from gross income described in this paragraph (a) does not apply to compensation deferred under one or

more eligible plans to the extent that the compensation so deferred during a participant's taxable year exceeds the greater of—

(i) $7,500, or,

(ii) As applicable, the sum of the plan ceilings determined under § 1.457–2(f), to the extent such sum does not exceed $15,000.

(3) *Maximum deferral; exclusions under section 403 (b) taken into account.* Under section 457(c)(2), for a participant's taxable year for which an amount is contributed to an annuity contract described in section 403(b) (including a custodial account described in section 403(b)(7)) on behalf of the participant, subparagraph (2) of this paragraph (a) is applied by substituting—

(i) For $7,500, an amount equal to $7,500, less the amount excludable from the participant's gross income under section 403(b) for the taxable year,

(ii) For the sum of the plan ceilings determined under § 1.457–2(f), an amount equal to the sum of the plan ceilings determined under § 1.457–2(f), less the amount excludable from the participant's gross income under section 403(b) for the taxable year, if such amount is not taken into account under such §1.457–2(f), and

(iii) For $15,000, an amount equal to $15,000, less the amount excludable from the participant's gross income under section 403(b) for the taxable year.

(b) *Amounts made available to participant*—(1) *In general.* For purposes of section 457(a) and this section, amounts deferred under an eligible plan will not be considered made available to the recipient if under the plan the recipient may irrevocably elect, prior to the time any such amounts become payable to the recipient, to defer payment of some or all of such amounts to a fixed or determinable future time. In addition, amounts deferred under an eligible plan will not be considered made available to the participant solely because the participant is permitted to choose among various investment modes under the plan for the investment of such amounts.

(2) *Examples.* The provisions of subparagraph (1) of this paragraph (b) are illustrated, in part, by the following examples:

Example (1). (i) C, an individual, is a participant in an eligible State deferred compensation plan that provides the following:

(A) The total of the amounts deferred under the plan is payable to the participant in 120 substantially equal monthly installments commencing on the date 30 days after the participant attains normal retirement age under the plan (age 65), unless the participant elects, within the 90 days period ending on the date the participant attains normal retirement age, to receive a single sum payment of the deferred amounts. The single sum payment is payable to a participant on the date the first of the monthly payments would otherwise be payable to the participant.

(B) If a participant separates from the service of the State before attaining normal retirement age, the total of the amounts deferred under the plan is payable to the participant in a single sum payment on the date 90 days after the date of the separation, unless, before the date 30 days after the separation, the participant elects not to receive the single sum payment. The election is irrevocable. If the participant makes the election, the total of the amounts deferred under the plan is payable to the participant as described in (A), either in monthly installments or, at the election of the participant, in a single sum payment.

(ii) On June 6, 1982, C, a calendar year taxpayer aged 59, separates from the service of the State. On June 18, 1982, C elects not to receive the single sum payment payable on account of the separation. Because of C's election, no amount deferred under the plan is includible in C's gross income for 1982 by reason of C's right to receive the single sum payment.

(iii) On Feburary 6, 1988, C attains age 65. C did not, within the 90 day period elect the single sum payment that is payable in lieu of the monthly installments. Amounts deferred under the plan are includable in C's gross income as they are paid to C in the monthly installments. No amount is includable in C's gross income by reason of C's right to elect the single sum payment.

Example (2). Assume the same facts as in example (1), except that the plan provides that notwithstanding that monthly installments have commenced under the plan, as described in (i)(A), the participant may, without restriction, elect to receive all or any portion of the amount remaining payable to the participant. The total of the amounts deferred under the plan is includable in C's gross income for 1988.

(c) *Life insurance proceeds and death benefits paid under eligible plan.* No amount received or made available under an eligible plan is excludable from gross income under section 101(a) (relating to life insurance contracts) or section 101(b) (relating to employees death benefits).

(d) *Definitions.* For purposes of §§ 1.457–1 through 1.457–4—

(1) *Participant.* "Participant" means an individual who is eligible under § 1.457–2(d) to defer compensation under the plan.

(2) *Beneficiary.* "Beneficiary" means a beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant.

(3) *Amounts deferred.* "Amount(s) deferred" under an eligible plan means compensation deferred under the plan, plus income attributable to compensation so deferred. Income attributable to compensation deferred under an eligible plan includes gain from the disposition of property.

§ 1.457–2 Eligible State deferred compensation plan defined.

(a) *In general.* For purposes of §§ 1.457–1 through 1.457–4, an "eligible State deferred compensation plan" is a plan satisfying the requirements of paragraphs (c) through (k) of this section.

(b) *Plan.* For purposes of this section and § 1.457–3, the term "plan" includes any agreement or arrangement between a State (within the meaning of paragraph (c) of this section) and a participant or participants, under which the payment of compensation is deferred, but only if such agreement or arrangement is not described in § 1.457–3(b).

(c) *State.* The plan must be established and maintained by a State. For this purpose, the term "State" includes—

(1) The 50 states of the United States and the District of Columbia,

(2) A political subdivision of a State,

(3) Any agency or instrumentality of a State or political subdivision of a State,

(4) An organization that is exempt from tax under section 501(a) and engaged primarily in providing electrical service on a mutual or cooperative basis, and

(5) An organization that is described in section 501(c) (4) or (6) and exempt from tax under section 501(a) and at least 80% of the members of which are organizations described in subparagraph (4). Where it appears in this § 1.457–2, the term "State" means the entity described in this paragraph (c) that sponsors the plan.

(d) *Participants.* The plan must provide that only individuals who perform services for the State, either as an employee of the State or as an independent contractor, may defer compensation under the plan.

(e) *Maximum deferrals*—(1) *In general.* The plan must provide that the amount of compensation that may be deferred under the plan for a taxable year of a participant shall not exceed an amount specified in the plan (the "plan ceiling"). Except as described in paragraph (f) of this section, a plan ceiling shall not exceed the lesser of—

(i) $7,500, or

(ii) 33⅓% of the participant's includible compensation for the taxable year reduced by any amount excludable from the participant's gross income for the taxable year under section 403(b) on

account of contributions made by the State.

(2) *Includible compensation.* For purposes of this section, a participant's includible compensation for a taxable year includes only compensation from the State that is attributable to services performed for the State and that is includible in the participant's gross income for the taxable year. Accordingly, a participant's includible compensation for a taxable year does not include an amount payable by the State that is excludable from the employee's gross income under section 457(a) and §1.457–1 or under section 403(b) (relating to annuity contracts purchased by section 501(c)(3) organizations or public schools), section 105(d) (relating to wage continuation plans) or section 911 (relating to income earned in certain camps). A participant's includible compensation for a taxable year is determined without regard to any community property laws.

(3) *Compensation taken into account at its present value.* For purposes of subparagraph (1) of this paragraph, compensation deferred under a plan shall be taken into account at its value as of the end of the plan year in which deferred. However, if the compensation deferred is subject to a substantial risk of forfeiture (as defined in section 457(e)(3)), such compensation shall be taken into account at its value as of the end of the plan year in which such compensation is no longer subject to a substantial risk of forfeiture.

(f) *Limited catch-up*—(1) *In general.* The plan may provide that, for 1 or more of the participant's last 3 taxable years ending before the participant attains normal retirement age, the plan ceiling is an amount not in excess of the lesser of–

(i) $15,000, reduced by any amount excludable from the participant's gross income for the taxable year under section 403(b) on account of contributions made by the State, or

(ii) The amount determined under subparagraph (2) of this paragraph.

(2) *Underutilized limitations.* The amount determined under this subparagraph (2) is the sum of—

(i) The plan ceiling established under paragraph (e)(1) of this section for the taxable year, plus

(ii) The plan ceiling established under paragraph (e)(1) of this section for any prior taxable year, less the amount of compensation deferred under the plan for such prior taxable year.

A prior taxable year shall be taken into account under subdivision (ii) of this subparagraph (2) only if (A) it begins after December 31, 1978, (B) the participant was eligible to participate in the plan during all or any portion of the taxable year, and (C) compensation deferred under the plan during the taxable year was subject to a plan ceiling established under paragraph (e)(1) of this section.

(3) *Normal retirement age.* For purposes of this paragraph (f), if no normal retirement age is specified in the plan, then the normal retirement age under the plan is the later of the latest normal retirement age specified in any other plan maintained by the State, or age 65.

(g) *Agreement for deferral.* The plan must provide that, in general, compensation is to be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the first day of the month. However, a plan may provide that, with respect to a new employee, compensation is to be deferred for the calendar month during which the participant first becomes an employee, if an agreement providing for such deferral is entered into on or before the first day on which the participant becomes an employee.

(h) *Payments under the plan*—(1) *In general.* The plan may not provide that amounts payable under the plan will be paid or made available to a participant or beneficiary before the participant separates from service with the State, or, if the plan provides for payment in the case of an unforeseeable emergency, before the participant incurs an unforeseeable emergency.

(2) *Separation from service; general rule.* An employee is separated from service with the State if there is a separation from the service within the meaning of section 402(e)(4)(A)(iii), relating to lump sum distributions.

(3) *Separation from service; independent contractor*—(i) *In general.* An independent contractor is considered separated from service with the State upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the State, if the expiration constitutes a good-faith and complete termination of the contractual relationship. An expiration will not constitute a good faith and complete termination of the contractual relationship if the State anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, a State is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to again contract for the services provided under the expired contract, and neither the State nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, a State is considered to intend to again contract for the services provided under an expired contract, if the State's doing so is conditioned only upon the State's incurring a need for the services, or the availability of funds, or both.

(ii) *Special rule.* Notwithstanding subdivision (i), if, with respect to amounts payable to a participant who is an independent contractor, a plan provides that—

(A) No amount shall be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the State (or, in the case of more than one contract, all such contracts expire), and

(B) No amount payable to the participant on that date shall be paid to the participant if, after the expiration of the contract (or contracts) and before that date, the participant performs services for the State as an independent contractor or an employee,

the plan is considered to satisfy the requirement described in subparagraph (1) that no amounts payable under the plan will be paid or made available to the participant before the participant separates from service with the State.

(4) *Unforeseeable emergency.* For purposes of this paragraph (f), an unforeseeable emergency is, and if the plan provides for payment in the case of an unforeseeable emergency must be defined in the plan as, severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent (as defined in section 152(a)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved—

(i) Through reimbursement or compensation by insurance or otherwise,

(ii) By liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or

(iii) By cessation of deferrals under the plan.

Examples of what are not considered to be unforeseeable emergencies include the need to send a participant's child to college or the desire to purchase a home.

(5) *Emergency withdrawals.* Withdrawals of amounts because of an unforeseeable emergency must only be permitted to the extent reasonably needed to satisfy the emergency need.

(i) *Distributions of deferrals*—(1) *Commencement of distributions.* A plan is not an eligible plan unless under the plan the payment of amounts deferred will commence not later than the latest of—

(i) Unless the participant has otherwise elected 60 days after the close of the participant's taxable year in which the participant attains normal retirement age under the plan, or, if earlier, age 65,

(ii) The close of the participant's taxable year in which the participant separates from service with the State, or

(iii) The close of the participant's taxable year in which the participant attains age 70½.

(2) *Period of distributions.* A plan is not an eligible plan unless under the plan amounts deferred will be paid—

(i) Over the life of the participant,

(ii) Over the lives of the participant and the participant's spouse,

(iii) Within a period certain not extending beyond the life expectancy of the participant, or

(iv) Within a period certain not extending beyond the joint life and last survivor expectancy of the participant and the participant's spouse.

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

(3) *Minimum distribution.* A plan is not an eligible plan, unless beginning with the participant's taxable year in which the participant attains age 70½ (or, if later, the participant's taxable year in which the payments commerce) the amount to be paid to the participant each year under the plan is not less than the lesser of—

(i) The balance of the amounts deferred, or

(ii) An amount equal to the quotient obtained by dividing the balance of the amounts deferred at the beginning of the year by the life expectancy of the participant (or the joint life and last survivor expectancy of the participant and the participant's spouse, as applicable), determined as of the date the participant attains age 70 and reduced by one for each taxable year commencing after the participant attains age 70½.

However, no amount need be paid in any year, or a lesser amount may be paid, if, beginning with the participant's taxable year in which the participant attains age 70½ (or, if later, the participant's taxable year in which payments commence), the aggregate of the amounts paid by the end of the year are at least equal to the aggregate of the minimum amounts required by the preceding sentence to have been paid by the end of the year. An annuity or endowment contract issued by an insurance company which provides for non-increasing payments over one of the periods described in subparagraph (2) of this paragraph beginning no later than the close of the taxable year in which the individual attains age 70½ (or, if later, the participant's taxable year in which the payments commence) satisfies the requirements of this subparagraph (3).

(4) *Distributions to beneficiaries.* A plan is not an eligible plan unless under the plan, if the participant dies before the entire amount deferred is paid to the participant (or if payment has commenced to the participant's surviving spouse and such surviving spouse dies before the entire amount is paid to such spouse), the entire amount deferred (or the remaining part of such deferrals if payment thereof has commenced) will, within 5 years after the participant's death (or the death of the surviving spouse), be paid under the plan.

(j) *Administration of plan.* A plan is not an eligible plan unless all amounts deferred under the plan, all property and rights to property (including rights as a beneficiary of a contract providing life insurance protection) purchased with the amounts, and all income attributable to the amounts, property, or rights to property, remain (until paid or made available to the participant or other beneficiary under the plan) solely the property and rights of the State (without being restricted to the benefits under the plan) subject to the claims of the general creditors of the State only. However, nothing in this paragraph (i) prohibits a plan's permitting participants to direct, from among different modes under the plan, the investment of the above amounts (see § 1.457–1(b)(1)).

(k) *Plan-to-plan transfers prohibited.* The plan may not provide for the payment of amounts under the plan other than amounts deferred under the plan (within the meaning of § 1.457–1(e)(3)).

(l) *Effect on plan when not administered in accordance with paragraphs (c) through (k).* A plan that is administered in a manner which is inconsistent with one or more of the requirements of paragraphs (c) through (k) of this section ceases to be an eligible plan on the first day of the first plan year beginning more than 180 days after the date of written notification by the Internal Revenue Service that the requirements are not satisfied, unless the inconsistency is corrected before the first day of that plan year. If a plan ceases to be an eligible plan as described in this paragraph (l), amounts deferred under the plan before the first day of the first plan year for which the plan ceases to be an eligible plan will nevertheless be includible in the participant's gross income in accordance with § 1.457–1. The preceding sentence does not apply to any amount deferred under a plan or arrangement described in paragraph (b) of this section in a taxable year beginning before January 1, 1979.

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

Example 1. A, born on June 1, 1917, is a participant in an eligible State deferred compensation plan providing a normal retirement age of 65. The plan provides limitations on deferrals up to the maximum permitted under § 1.457–2(e) and (f).

For 1979, A, who will be 62, is scheduled to receive a salary of $20,000 from the State. A desires to defer the maximum amount possible in 1979. The maximum amount that A may defer under the plan is the lesser of $7,500, or 33⅓% of A;s includible compensation (generally the equivalent of 25 percent of gross compensation). Accordingly, the maximum that A may defer for 1979 is $5,000 [$5,000 = $20,000 x .25]. Although A's taxable year 1979 is one of A's last 3 taxable years before the year in which A attains normal retirement age under the plan, A is not able to utilize the catch-up provisions of § 1.457–2 (f) in 1979 because only taxable years beginning after December 31, 1978, may be taken into account under those provisions.

Example 2. Assume the same facts as in example 1. In A's taxable year 1980, A receives a salary of $20,000, and elects to defer only $1,000 under the plan. In A's taxable year 1981, A again receives a salary of $20,000 and elects to defer the maximum amount permissible under the plan's catch-up provisions prescribed under § 1.457–2 (f). The applicable limit on deferrals under the catch-up provision is the lesser of $15,000 or the sum of the normal plan ceiling for 1981, plus any underutilized deferrals for any taxable year before 1981. Thus, the maximum amount that A may defer in 1981 is $9,000, the normal plan ceiling for 1981, $5,000, plus the underutilized deferrals for 1980, $4,000.

Example 3. Assume the same facts as in examples 1 and 2. In A's taxable year 1982, the year in which A will attain age 65, normal retirement age under the plan, A desires to defer the maximum amount possible under the plan. For 1982 the normal limitations of § 1.457–2 (e) are applicable, and the maximum amount that A may defer is $5,000, assuming that A's salary for 1982 was again

$20,000. The plan's catch-up provisions prescribed under § 1.457–2 (f) are not applicable because 1982 is not a year ending before the year in which A attains normal retirement age.

§ 1.457–3 Tax treatment of participants where plan is not an eligible plan.

(a) *In general.* If a State (within the meaning of § 1.457–2 (c)) provides for a deferral of compensation under any agreement or arrangement described in § 1.457–2 (b) that is not an eligible plan within the meaning of § 1.457–2—

(1) Compensation deferred under the agreement or arrangement shall be includible in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture (within the meaning of section 457 (e) (3)) of such compensation, and

(2) Amounts made available under the plan to a participant or beneficiary shall be taxable to the recipient under section 72, relating to annuities.

(b) *Exceptions.* Paragraph (a) does not apply with respect to—

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

(2) An annuity plan or contract described in section 403.

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

(4) That portion of any plan which consists of a transfer of property described in section 83, and

(5) That portion of any plan which consists of a trust to which section 402 (b) applies.

(c) *Effective date.* This section is effective for amounts deferred in taxable years beginning after December 31, 1981.

§ 1.457–4 Transitional rules.

(a) *In general.* Subject to the limitations described in paragraphs (b) and (c) of this section, amounts deferred (within the meaning of § 1.457–1(d)(3)) in taxable years beginning after December 31, 1978, and before January 1, 1982 under an agreement or arrangement described in § 1.457–2(b) (including an eligible plan within the meaning of § 1.457–2), but not including a plan described in section 457(e)(2) and § 1.457–3(b) shall be includible in gross income only for the taxable year in which paid or otherwise made available to the participant or other beneficiary.

(b) *General limitation.* Except as described in paragraph (c) of this section, compensation deferred under one or more plans described in paragraph (a) of this section is excludible from a participant's gross income under this section for a taxable year only to the extent it does not exceed the lesser of—

(1) $7,500, or

(2) 33⅓% of the participant's includible compensation (within the meaning of § 1.457–2(e)(1)) for the taxable year,

reduced by any amount excludible from the participant's gross income for the taxable year under section 403(b) on account of contributions made by the State (within the meaning of § 1.457–2(c)).

(c) *Limited catch-up.* This paragraph (c) applies if all plans described in paragraph (a) of this section in which an individual is a participant are eligible plans within the meaning of § 1.457–2, and the participant's taxable year is a taxable year described in section 457(b)(3) and § 1.457–2(f). In such a case, compensation deferred under the plans for the taxable year is excluded from gross income under paragraph (a) of this section to the extent it does not exceed the amount determined under § 1.457–1(a)(2) or, as applicable, § 1.457–1(a)(3).

William E. William,

Acting Commissioner of Internal Revenue.

[FR Doc. 80–40326 Filed 12–23–80; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF EDUCATION

34 CFR Parts 104 and 300

Education of Handicapped Children—Implementation of Part B of the Education of the Handicapped Act; Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

AGENCY: Department of Education.

ACTION: Notice of intent to develop regulations, interpretative rules, or policy statements.

SUMMARY: The Secretary of Education provides notice of the possible development of policy interpretations or regulations relevant to several provisions of Part B of the Education of the Handicapped Act and Section 504 of the Rehabilitation Act of 1973. This notice is provided to encourage public comment on the need for further guidance in specified areas. The notice describes areas in which policy may be clarified or developed by the Department relating to the education of handicapped children.

DATES: All comments in response to this Notice of Intent must be received on or before February 9, 1981.

ADDRESS: Comments may be addressed to either of the following offices (comments received by either office will be jointly reviewed): Ms. Shirley A. Jones, Office of Special Education, Department of Education, Donohoe Building, Room 4030, 400 Maryland Avenue, S.W., Washington, D.C. 20202; or Mr. Edward A. Stutman, Office for Civil Rights, Department of Education, Switzer Building, Room 5430, 300 C Street S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley A. Jones, telephone (202) 472–7921 or Mr. Edward A. Stutman, telephone (202) 245–0781.

SUPPLEMENTARY INFORMATION: The Secretary may develop interpretative rules, regulations, or policy statements in a number of areas where questions have arisen under Part B of the Education of the Handicapped Act, as amended ("EHA–B"), and Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"). Seven areas where policy may be developed are identified below. In each of these areas, a summary of existing law is provided, and one or more specific questions have been posed.

Members of the public are invited to provide comments on any of the issues or questions in this notice during the 45-day comment period the Department of Education has provided. By publishing this notice the Department seeks, on an experimental basis, to help ensure a more open process of policy development.

For each of the following issues, the Secretary requests commenters to assist the Department by—

(1) Identifying specific aspects of a particular issue where clarification is needed; and

(2) Discussing their views concerning the resolution of the issue.

Note.—Throughout this Notice regulations for EHA–B and Section 504 are cited. These regulations have been recodified recently. The EHA–B regulations have been changed from 45 CFR Part 121a to 34 CFR Part 300. The Section 504 regulations have been changed from 45 CFR Part 84 to 34 CFR Part 104.

A. Due Process Protections

Under the Department's regulations implementing EHA–B, an administrative due process hearing may not be conducted by a person who is an employee of a public agency that is involved in the education or care of the handicapped child, or by any person having a personal or professional interest that could conflict with his or her objectivity in conducting a hearing (34 CFR 300.507(a)).

Similar requirements are imposed by Section 504 (34 CFR 104.36). If there is an appeal from the hearing, the State

educational agency (SEA) must provide an impartial review under both EHA–B regulations (34 CFR 300.510(b)), and Section 504 regulations (34 CFR 104.36).

1. What guidance should the Department provide regarding appropriate criteria for determining and ensuring the impartiality of hearing officials and review officials?

2. Should any or all of the following individuals be prohibited from serving as a hearing officer: (a) State employees; (b) the State Superintendent; (c) local educational agency (LEA) officials serving other school districts in the State?

3. If there is an appeal of the findings and decision in the due process hearing, should the following individuals be prohibited from serving as a reviewing official: (a) State employees; (b) State Superintendents; (c) members of State Boards of Education?

4. Under current EHA–B regulations, parents have the right to "obtain a written or electronic verbatim record" of an administrative due process hearing (34 CFR 300.508(a)(4)). Should a public agency be required to make available to parents, free of charge, hearing transcripts or other records pertaining to an administrative due process hearing at the LEA or SEA level?

B. Out of State Placement of Handicapped Children

Under existing EHA–B regulations, SEAs are required to ensure that handicapped children who are placed in or referred to a private school or facility by a public agency are provided special education and related services (1) in conformance with an individualized education program, (2) at no cost to the parents, (3) in a school or facility that meets standards applied to State and local educational agencies. SEAs must also ensure that these children have all the rights of handicapped children who are served by a public agency (34 CFR 300.401). Existing regulations also specify that programs of residential placement, including non-medical care and room and board, must be provided, in appropriate cases, at no cost to parents (34 CFR 300.302). Section 504 regulations contain similar provisions (34 CFR 104.33).

1. When a State or local educational agency places a child in an out-of-State program to receive a free appropriate public education, what are the financial obligations of the sending agency?

2. What is the monitoring responsibility of the sending State?

3. What are the obligations of the receiving State, if any?

C. Extended School Year Program for Handicapped Children

In a legal brief submitted, as friend of the court, in recent litigation (*Georgia Association of Retarded Children* v. *McDaniel*, N.D. Ga. 1978), the Department took the position that under existing regulations implementing EHA–B (34 CFR 300.300) and Section 504 (34 CFR 100.33), each handicapped child must be provided special education and related services in accordance with an individualized education program, and that State rule or policy that imposes time limitations on the provision of services to handicapped children precludes an individual determination of each handicapped child's unique needs for services.

Under what circumstances must special education and related services be provided to individual handicapped children beyond the regular school year?

D. Services Provided to Children Who Are Placed in Private Schools by Their Parents

Under the EHA–B regulations, SEAs have certain responsibilities for providing special education and related services to handicapped children who are placed in private schools by their parents—even though a free appropriate public education would be available through the State or local education agency. (34 CFR 300.451–452). In addition, the Education Division General Administrative Regulations (EDGAR) require subgrantees of SEAs to provide students enrolled in private schools with a "genuine opportunity for equitable participation"; to consult with representatives of students in private schools in the development of their projects; and to spend the same average amount of program funds on students enrolled in private schools and those enrolled in public schools unless the average cost of meeting the needs of these students is different (34 CFR 76.651, 76.652, 76.655). EDGAR also specifies the kind of benefits that must be provided to students in private schools (34 CFR 76.654). (NOTE: EDGAR, currently found at 34 CFR Part 76, was formerly at 45 CFR Part 100b).

1. What further guidance should the Department provide in the application of the EDGAR provisions to handicapped children who are enrolled in private schools by their parents, rather than by the local or State educational agency?

2. What further guidance should the Department provide regarding the consultation requirement?

3. What further guidance should the Department provide regarding the "comparable benefits" provision?

4. What further guidance should the Department provide regarding the level of expenditure provision?

E. Nondiscrimination in Evaluation Procedures

Existing EHA–B regulations require that testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children be selected and administered so as not to be racially or culturally discriminatory. Additional guidance is also provided regarding procedures to assess general intelligence and the use of evaluation materials in a child's native language or other modes of communication (34 CFR 300.530(b), 300.532). Section 504 regulations also include evaluation and placement requirements (34 CFR 104.35).

1. What additional guidance should the Department provide relating to testing and evaluation materials and procedures that are not racially or culturally discriminatory?

2. What additional guidance is needed regarding the assessment of general intelligence?

3. What additional guidance is needed concerning the effect of using translators and interpreters on test validity?

F. Least Restrictive Environment

Existing EHA–B regulations require that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are non-handicapped. Furthermore, special classes, separate schooling, or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR 300.550). A similar requirement is imposed by Section 504 regulations (34 CFR 104.34).

What are the disability-related reasons that would justify the provision of educational services to handicapped children in schools or other enrollments serving only handicapped children?

G. Suspension and Expulsion

Current EHA–B and Section 504 regulations do not provide complete guidance on the extent to which school authorities are permitted to discipline handicapped children by suspending or expelling them from school. In a legal brief submitted as a friend of the court in *S–1* v. *Turlington* (5th Cir. April, 1980), the Department took the position that the expulsion of handicapped students

without a prior, individual determination of the relationship between a student's misconduct and (1) his or her handicap; or (2) any inappropriate placement violated EHA–B and Section 504.

1. Where a determination has been made that a handicapped student's behavior is not related to his or her handicap or any inappropriate placement, under what circumstances, if any, are long-term exclusions permissible?

2. Under what circumstances, if any, are short-term exclusions permissible?

3. Must an educational agency make a prior determination of the relationship between a handicapped student's behavior and his or her handicap before ordering a short-term exclusion? What further guidance could the Department provide on how this determination should be made?

4. What procedures are required for what specific periods of permissible exclusion? What further guidance should the Department provide regarding the application of the procedural safeguards of EHA–B and Section 504?

5. How can the Department minimize burdens on students, parents, and educational agencies that regulations governing the suspension and expulsion of handicapped children may impose? Commenters should focus on requirements over and above those minimal standards for all children already imposed under procedures mandated by *Goss* v. *Lopez*, 419 U.S. 565 (1975).

(Catalog of Federal Domestic Assistance No. 84.027, Education of Handicapped Children, Part B)

Dated: December 19, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80–40113 Filed 12–23–80; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[AS–FRL No. 1713–7]

Agenda of Regulations; Postponed

AGENCY: Environmental Protection Agency.

ACTION: Agenda of regulations—notice.

SUMMARY: EPA's Agenda of Regulations, which was scheduled for publication in December 1980, will not appear until early January.

FOR FURTHER INFORMATION CONTACT: David Sahr, Environmental Protection Agency, PM–223, Washington, D.C. 20460, (202) 287–0776.

Henry E. Beal,

Director, Standards and Regulations Division.

[FR Doc. 80–40324 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–36–M

40 CFR Part 57

[EN–FRL 1691–8]

Primary Nonferrous Smelter Orders; Proposed Amendments

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: This notice proposes several amendments to the regulations concerning nonferrous smelter orders (NSO) EPA published on June 24, 1980, under Section 119 of the Clean Air Act. This action is being taken in response to petitions for reconsideration the Administrator received. The intended effect is to 1) allow an NSO to provide that certain emissions that occur during startup of an acid plant after scheduled maintenance are not excess emissions and 2) make a smelter owner's consent to liability inapplicable in criminal proceedings.

DATES: Written public comments on the proposed amendments should be postmarked no later than January 23, 1981.

ADDRESSES: All written comments should be submitted (in duplicate, if possible) to Central Docket Section (A–130), Docket Number DSSE 78–1, United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Any request for a public hearing should be directed, in writing, to the Information Contact listed below, as well as to the docket.

Docket number DSSE 78–1 is open for public inspection and copying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Main Lobby, Gallery I, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David Rochlin, Division of Stationary Source Enforcement (EN–341), 401 M Street, SW., Washington, D.C. 20460, telephone 202–755–2542.

SUPPLEMENTARY INFORMATION: On June 24, 1980, EPA promulgated regulations that established the minimum required contents of initial primary nonferrous smelter orders (NSOs) issued under section 119 of the Clean Air Act (Act), and the criteria and procedures EPA will use in issuing NSOs and in evaluating NSOs issued by States.

In a petition dated August 5, 1980, the State of Arizona (Arizona) requested the Administrator of EPA to reconsider several parts of the NSO rules, as did ASARCO Incorporated and Magma Copper Company in a joint petition for reconsideration dated August 25, 1980, and supplemented October 7, 1980.

In response to the Arizona petition, EPA is today proposing several amendments to the NSO regulations. These proposed amendments, and the reasons for them, are discussed at length in EPA's response to the petitions for reconsideration. This response appears elsewhere in today's **Federal Register.** These proposed amendments are being published apart from the rest of EPA's response because the rest of that response is judicially reviewable final action, unlike the following proposal.

(Secs. 110, 114, 119 and 301 of the Clean Air Act, as amended, 42 U.S.C. 7410, 7414, 7419 and 7601, and Section 406 of Pub. L. 95–95)

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

The Administrator proposes to amend Part 57 in Title 40 of the Code of Federal Regulations as follows:

Subpart C—Constant Controls and Related Requirements

1. By revising the first sentence of paragraph (e) of § 57.304 to read as follows:

§ 57.304 Bypass, excess emissions and malfunctions.

* * * * *

(e) An NSO may provide that excess emissions which occur during acid plant start-up as the result of the cooling of acid plant catalyst due to the unavailability of process gas to an acid plant during a prolonged SCS curtailment or scheduled maintenance are not excess emissions. * * *

Subpart D—Supplementary Control System Requirements

2. By revising § 57.403 to read as follows:

§ 57.403 Written consent.

(a) *The consent.* The NSO shall include a written consent, signed by a corporate official empowered to do so, in the following form:

As a condition of receiving a Primary Nonferrous Smelter Order (NSO) under section 119 of the Clean Air Act for the smelter operated by (*name of company*) at (*location*), the undersigned official, being empowered to do so, consents for the company as follows:

(1) In any civil proceeding (judicial or administrative) to enforce the NSO, the company will not contest:

(a) Liability for any violation of the National Ambient Air Quality Standards for sulfur dioxide in the smelter's designated liability area (DLA), except on the ground that a determination under 40 CFR 57.402(c)(3) was clearly wrong; or

(b) The conclusive allocation of liability under NSO provisions satisfying 40 CFR 57.402(d)(1) between the company's smelter and any other smelter(s) for any violation of the National Ambient Air Quality Standards for sulfur dioxide in an area of overlapping DLAs.

(2) The issuing agency (as defined in 40 CFR 57.103) will be allowed unrestricted access at reasonable times to inspect, verify calibration of, and obrain data from ambient air quality monitors operated by the company under the requirements of the NSO.

(b) *Rights not waived by the consent.* This consent shall not be deemed to waive any right(s) to judicial review of any provisions of an NSO that are otherwise available to the smelter owner or operator under section 307(b) of the Clean Air Act.

[FR Doc. 80-40143 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-33-M

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40 CFR Part 60

[AD-FRL 1625-8]

Standards of Performance for New Stationary Sources; Industrial Surface Coating: Appliances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: Standards of performance are proposed to limit emissions of volatile organic compounds (VOCs) from new, modified, or reconstructed surface coating operations within appliance assembly plants. The standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that surface coating operations within appliance assembly plants cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed appliance surface coating operations to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATE: Comments. Comments must be received on or before February 23, 1981.

Public hearing. The public hearing will be held on January 28, 1981 beginning at 9 a.m.

Request to speak at hearing. Persons wishing to present oral testimony should contact EPA by January 21, 1981.

ADDRESSES: Comments. Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket number A-80-6, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

Public hearing. The public hearing will be held at OA Auditorium EPA, R.T.P., North Carolina. Persons wishing to present oral testimony should notify Mrs. Noami Durkee. Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5331.

Background Information Document. The Background Information Document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to *Industrial Surface Coating: Appliances—Background Information for Proposed Standards*, EPA-450/3-80-037a.

Docket. The docket, number A-80-6, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5421.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standards would limit VOC emissions from each surface coating operation to 0.90 kilogram of VOCs per liter (kg/*l*) of coating solids applied to appliance parts or products. Compliance with the proposed standards could be achieved by the use of coatings that result in VOC emissions less than or equal to 0.90 kg/*l* of applied coating solids or by the use of coatings with an average organic-solvent content that, in conjunction with any capture system and control device operated at the reduction efficiency demonstrated during the most recent performance test, limits emissions to 0.90 kg/*l* of applied coating solids. Formulation data from the coating manufacturer would be used to determine the VOC content of coatings applied for each affected facility. Reference Method 24 published on October 3, 1980 (45 FR 65956) would be the reference method for verification. Reference Method 25 published on October 3, 1980 (45 FR 65956) would be used to determine the percentage reduction of VOC emissions achieved through the use of a capture system and control device.

The proposed standards would apply to each new, modified, or reconstructed surface coating operation within an appliance assembly plant. Existing facilities would not be subject to the regulation unless modified or reconstructed as defined in 40 CFR 60.14 or 60.15. For these standards, any of the following organic surface-coated metal products manufactured for household, commercial, or recreational use would be considered appliance products:

Range	Dryer
Range hood	Dry cleaning equipment
Microwave oven	Water heater
Oven	Trash compactor
Refrigerated display case	Water Softener
Refrigerator	Interior lighting fixture
Freezer	Vacuum cleaner
Washer	Ice maker
Dishwasher	

The following organic surface-coated metal products manufactured for household use would also be considered appliance products:

Air purifier	Fan
Baseboard heater	Furnace
Room heater	Window air conditioner
Humidifier	Unitary air conditioner
Dehumidifier	Heat pump

The majority of the data upon which the proposed standards were developed pertained to the surface coating of traditional household appliances such as cooking equipment, laundry equipment, refrigerators, and freezers. Recent EPA research indicates that many other appliances are coated with similar materials by similar methods. These other appliances are often similar in size and shape to the traditional household appliances. The coating application methods—flow coat, dip coat, electrodeposition, and air, airless, and electrostatic spray—are identical. These additional appliance coating operations use coating materials similar to those used in large appliance coating operations. Coating performance specifications are also similar, except for slight variations depending upon whether the unit is designed for indoor or outdoor use. Therefore, these

operations produce the same types, and proportionally the same quantities, of VOC emissions as large appliance surface coating operations. EPA believes that similarities also often exist in the ratio of the cost of coating the appliance to its total unit cost.

Because these other segments of the appliance industry are similar in key respects to the large appliance surface coating industry and because these segments would not be subject to other standards under development by the Agency, EPA believes that the source category for appliance surface coating operations should be expanded to include products other than large household appliances.

There appears elsewhere in this issue of the **Federal Register** a proposed amendment to the priority list for standards of performance for new stationary sources. The amendment proposes to change the source category "Industrial Surface Coating: Large Appliances" to "Industrial Surface Coating: Appliances," thereby including in the source category appliance products in addition to the traditional large household appliances. All references in this preamble to proposed standards for appliance surface coating operations take into account the proposed amendment source category. Comments are invited concerning the list of products to be subject to the proposed standards (see **Miscellaneous** section of this preamble).

An affected facility is defined as a surface coating operation. A surface coating operation may be a prime coat or a topcoat operation and includes the application station(s) (spray booth(s), dip tank, or flow coating unit), flashoff area, and curing oven. The proposed standards would require each owner or operator, unless otherwise specified, to calculate for each affected facility the total mass of VOC emissions per liter of coating solids applied to appliance parts or products during 1 calendar month. Following this initial performance test period, the owner or operator would calculate VOC emissions for each calendar month. Each monthly calculation would be considered a performance test. Violations would be reported within 10 days of the end of the month. Equations and transfer efficiencies for calculating the emissions for each affected facility are provided in the proposed standards.

The proposed standards contain tables specifying the maximum allowable VOC content per unit volume of coating solids for generic families of application equipment. When the VOC content per unit volume of coating solids of each coating used during the month is less than or equal to the maximum allowable VOC content for the lowest transfer efficiency of any application equipment used in the affected facility, the owner or operator will not be required to calculate VOC emissions for each month.

The owner or operator would obtain the information necessary to calculate emissions from formulation data supplied by the manufacturer of the coating or from an analysis of each coating by Reference Method 24 or by an equivalent or alternative method acceptable to the Administrator. Coating and organic-solvent usage data would be obtained from company records. In the case of a question regarding the VOC content of coatings, Reference Method 24 would serve as the means by which the VOC content of the coating, and the resultant emissions, would be determined.

The proposed standards also contain performance test provisions for an affected facility that elects to use incineration as a means of compliance. The owner or operator would be required to determine monthly the average uncontrolled VOC emissions and the emission reduction achieved by a control device. Each monthly calculation would be considered a performance test. Equations for these calculations are provided in the proposed standards.

The proposed standards would require the owner or operator to install a monitoring device to continuously record the combustion (firebox) temperature of effluent gases that are incinerated to comply with the emission limit. The owner or operator would be required to report quarterly any 3-hour period when the average combustion temperature is more than 28° C below the most recent level that demonstrated compliance. If catalytic incineration is used, the owner or operator would be required to install a device to continuously record the gas temperature both upstream and downstream of the catalyst bed. A quarterly report would be required for any 3-hour period when the average temperature upstream of the catalyst bed is more than 28° C below the most recent level that demonstrated compliance. A quarterly report would also be required for any 3-hour period when the average difference between the gas temperature upstream and downstream of the catalyst bed is less than 80 percent of the most recent temperature difference that demonstrated compliance.

The proposed standards also contained performance test provisions for an affected facility that uses an organic-solvent recovery system to attain compliance. The owner or operator would be required to calculate, by the equations contained in the proposed standards, the uncontrolled VOC emissions from each affected facility and the emissions reduction achieved by the recovery device. The owner or operator would also be required to record daily the amount of organic solvent recovered by the system.

The proposed standards would also require the owner or operator to maintain at the source all records, data, calculations, test results, or other material supporting each calculation of VOC emissions for a minimum of 2 years.

Summary of Environmental, Energy, and Economic Impacts

Environmental, energy, and economic impacts of standards of performance are normally expressed as incremental differences between a facility complying with the proposed standards and a facility complying with a typical State Implementation Plan (SIP) emission standard. Most existing large appliance surface coating operations are located in localities that are considered nonattainment areas for achieving the National Ambient Air Quality Standard (NAAQS) for ozone. New facilities are expected to locate in similar areas. States are in the process of revising their SIPs for these areas and are expected to revise emission limitations for large appliance surface coating operations. In revising their SIPs, most of the States rely on the Control Techniques Guideline (CTG) Document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances" (EPA–450/2–77–034 [CTG]). The true incremental impact of the proposed standards of performance cannot be determined because the CTG recommendations do not place minimum requirements on the efficiency of the application equipment, and it appears that most of the revised SIPs will incorporate the CTG-recommended coating limit. Therefore, the CTG-recommended limit plus an assumed 60-percent industry average transfer efficiency form the basis for estimating the impacts of the proposed standards. Based on this estimated baseline, the proposed standards of performance would have little environmental, energy, or economic impact. This baseline may be somewhat conservative, however, because plants that are located in attainment areas may be subject to regulations that are less strict than the assumed limit. The effect of this assumption is that the actual emissions reduction and other impacts attributable

to the NSPS will be somewhat greater than that calculated.

As enumerated in the supporting documentation, the environmental, energy, and economic impacts that would result from imposition of this standard on the manufacturers of appliances not traditionally considered to be large household appliances are expected to be practically identical to those projected for the more traditional appliances. Additionally, because the proposed standards can be achieved with existing coatings technology and application methods, the economic impact is not expected to be greater on manufacturers located in attainment areas than on those situated in nonattainment areas.

Standards of performance have other benefits in addition to achieving reductions in emissions beyond those required by a typical SIP. They establish a degree of national uniformity, which precludes situations in which some States may attract industries by relaxing air pollution standards relative to other States. Further, standards of performance improve the efficiency of case-by-case determinations of best available control technology (BACT) for facilities located in attainment areas, and lowest achievable emission rates (LAER) for facilities located in nonattainment areas, by providing a starting point for the basis of these determinations. This starting point results from the process of developing a standard of performance, which involves a comprehensive analysis of alternative emission control technologies and an evaluation and verification of emission test methods.

Because compliance with the proposed standards would not require changes in coatings technology or application methods, the water pollution, solid waste, and energy impacts of these standards will be minimal. The proposed standards would have no impact on the capital or operating costs of new surface coating operations within appliance assembly plants because compliance can be achieved with existing coatings and application methods. Detailed cost and economic analysis of various regulatory alternatives are presented in the Background Information Document for the proposed standards of performance.

Rationale

Selection of Source and Pollutants

Studies have been conducted to investigate the effect standards of performance would have on nationwide VOC emissions from stationary sources. In the "Priority List and Additions to the List of Categories of Stationary Sources" published August 21, 1979 (44 FR 49222), source categories are ranked according to three specific criteria established by the Clean Air Act Amendments of 1977: (1) the quantity of emissions, (2) the extent to which each pollutant may reasonably be anticipated to endanger pubic health or welfare, and (3) the mobility and competitive nature of the source category. In this study, large appliance surface coating operations are ranked 28th out of 59 source categories considered for regulation.

Volatile organic compound (VOC) means any organic compund that participates in an atmospheric photochemical reaction or is measured by the applicable reference method or specified under any subpart. Photochemical oxidants result in a variety of adverse impacts on health and welfare, including impaired respiratory function, eye irritation, necrosis of plant tissue, and deterioration of selected synthetic materials, such as rubber. Further information on these effects can be found in the U.S. Environmental Protection Agency (EPA) document entitled "Air Quality Criteria for Ozone and Other Photochemical Oxidants" (EPA–600/8–78–004).

Industrial surface coating operations are a significant source of VOC emissions, accounting for over 2 million metric tons of VOC emissions each year. In 1976 the large appliance industry contributed an average of 90 metric tons of VOC emissions per plant, accounting for annual nationwide industry emissions of more than 15,000 metric tons. Most of the coatings used contain organic solvents that evaporate when the coating dries, resulting in VOC emissions. Typical coatings applied to appliance products include epoxies, epoxy-acrylics, acrylics, and polyester enamels. These coatings generally contain organic-based solvents such as ketones, esters, ethers, and aromatics. The surface coating operations is an intergral part of a large appliance assembly plant, accounting for about one-quarter to one-third of the total space occupied by a typical plant.

VOCs are the major air pollutants emitted from the appliance industry and result primarily from the use of organic-based solvents. Particulate matter emitted from the paint in this coating industry is minimal. Technology is currently available to reduce VOC emissions from appliance surface coating operations, thereby decreasing the formation of ozone in the atmosphere. Consequently, VOC emissions from appliance surface coating operations have been selected for regulation under a new source standard of performance.

Selection of Affected Facilities

Applicances are coated in two main steps: prime coat and topcoat. In 1976, prime coat operations accounted for 6,800 metric tons of VOC emissions, and topcoat operations accounted for 8,300 metric tons.

Prime coats may be waterborne or organic-solvent-borne. Waterborne coatings use water as the main carrier for the coating solids, although these coatings normally contain a small amount of organic solvent. Where a water-based prime coating is used, it is usually applied by EDP or flow coat. Organic-solvent-based prime coatings use organic solvent as the coating solids carrier and are usually applied by one of the conventional spray techniques.

The large appliance top coats presently used are almost entirely organic-solvent-based. One or more top coats may be applied to ensure sufficient coating thickness. An oven bake may follow each topcoat application, or the coating may be applied wet on wet (two or more layers with no intermediate cure).

The coating application station is the source of about 40 percent of total VOC emissions from the surface coating process. Coated parts then enter a flashoff tunnel that allows the organic solvent in the coating to evaporate slowly, preventing cracking during the baking process. Approximately 40 percent of VOC emissions originate from the flashoff area. The cases, doors, lids, panels, and other interior or exterior parts are then baked in a multipass oven, which accounts for about 20 percent of total VOC emissions from the surface coating process.

Prime coating and topcoating operations account for the majority of the VOC emissions in appliance assembly plants. The remaining VOC emissions result from final topcoat repair and equipment cleanup. Because of the very small quantity of coating used for final topcoat repair (touchup), the emissions from this source are not considered significant. Emissions from the organic solvents used in the cleanup operations are difficult to control because these operations occur intermittently and at many points along the surface coating line. Therefore, control devices such as incinerators cannot be used efficiently on these cleanup operations. Because prime coat and topcoat operations account for the bulk of VOC emissions from appliance manufacturing plants and control techniques for reducing VOC emissions

from these operations have been demonstrated, these operations have been selected for control by standards of performance.

The proposed standards would apply to each surface coating operation (prime coat and topcoat) in an appliance assembly plant. Each surface coating operation consists of the coating application station (spray booth(s), dip tank, or flow coating unit), flashoff area, and curing oven. The use of organic solvent as a dilution agent would be subject to the proposed standards, but the VOC emissions resulting from the use of organic solvent in cleanup or touchup operations would not.

Two other definitions of affected facilities were considered but eliminated in favor of the coating operation definition selected. They were: all prime coat (or topcoat) operations in a product line, and all prime coat (or topcoat) operations within an assembly plant. Because of the possibility of adopting different standards for prime coat and topcoat operations, these operations were treated separately. The product line definition would have reduced the number of affected facilities but would have permitted tradeoffs between different coatings and application technologies. These tradeoffs could have included the use of some systems with relatively high emissions in combination with, for instance, a powder station. Likewise, defining all prime coating (or topcoating) operations within a plant as the affected facility would have reduced the affected facilities and consequently the associated recordkeeping and compliance calculations. However, such a definition would have allowed the use of some coatings and application methods that do not meet the best demonstrated system of continuous emissions reduction criterion.

Control Technologies

For prime coat operations, most new or existing plants will comply with revised SIP requirements by applying waterborne coatings through EDP or low-organic-solvent-content coatings through conventional spraying methods. For topcoat operations, most of these plants will achieve compliance by applying low-organic-solvent-content coatings through conventional spraying methods. Emission control devices such as an incinerator or a carbon adsorption system could also be used in combination with organic-solvent-based coatings, but their use is not expected for economic reasons.

Transfer efficiency is the ratio of the coating solids that adhere to a part to the total amount of solids used. Improving transfer efficiency is a control technology that, in combination with the coating selected, can reduce emissions. The total quantity of coating needed for a given product is directy correlated with the resulting emissions, and an improvement in transfer efficiency will decrease emissions proportionately. Each type of application equipment has a different transfer efficiency, but not every type of equipment can be used with every type of coating. Transfer efficiencies in this industry range from 40 percent for air-atomized spray application to well over 90 percent for some recycling systems such as EDP and powder. Electrostatic spray equipment imparts a charge to the paint particles and relies on an opposite charge on the part to be coated to attract those particles. The transfer efficiency of this equipment is greater than that of spray systems that use air or hydraulic pressure to propel the coating toward the part.

Application of a coating by EDP involves dipping the appliance part or product to be coated into a bath containing a dilute water suspension of the coating material. Coatings in the EDP tank usually consist of about 90 percent (vol.) water, 4 percent (vol.) organic solvent, and 6 percent (vol.) paint solids. When charges of opposite polarity are applied to the dip tank and the part to be coated, the coating material deposits on the part. Because of the low-organic-solvent content and the high transfer efficiency, this control technology is the most effective control method for prime coating operations per volume of solids applied. However, the overall effectiveness of EDP as a means of control is mitigated because the method may result in deposition of a greater volume of solids on the part than is actually needed.

Waterborne coatings can also be applied by dip coating, flow coating, or spray coating. These waterborne coatings are usually comprised of about 56 percent (vol.) water, 14 percent (vol.) organic solvent, and 30 percent (vol.) paint solids. These coatings contain less organic solvent per volume of solids than do conventional organic-solvent-borne coatings and, depending upon the transfer efficiency of the application equipment used, can effectively reduce VOC emissions. Because they contain only a small amount of organic cosolvent, these coatings are less flammable than conventional organic-solvent-borne coatings. Waterborne coatings can also be applied by electrostatic spray. However, because of the costly electrical isolation and safety requirements, electrostatic spraying of waterborne coatings is not common in the large appliance industry.

The application of low-organic-solvent-content liquid coatings by conventional spray techniques has also been demonstrated for topcoat operations in the large appliance surface coating industry. These coatings are commonly referred to as "high-solids" coatings. The CTG for large appliance surface coating operations defines a high-solids coating as containing 0.34 kilogram of organic solvent per liter of coating (less water) (2.8 lb/gal), which is equivalent to a coating containing 62 percent (vol.) solids. Coating formulations of 62 percent (vol.) solids that meet most performance specifications are currently available to the manufacturers of appliances. As with waterborne coatings, when high-solids coatings are applied at high transfer efficiencies, VOC emissions are reduced to levels significantly below those resulting from the use of conventional organic-solvent-borne coatings.

Powder coatings are a special class of low-solvent coating in that they contain no organic solvent and emit few or no VOCs. They are an economically attractive coating alternative in large part because of the near absence of waste. Spray booths are equipped with ventilation and fabric filtration equipment that removes the powder overspray from exhaust air and returns it to the coating feed tank. Unlike conventional liquid coatings, however, powder coatings are completely intolerant of cross color contamination. Even one particle of a contrasting colored powder entrained onto an applicance part will be visible after cure. Powder coatings are ideally suited for applying a single color on a product line. Provisions for applying multiple colors directly affect the cost of powder systems.

Unlike other low-solvent coatings, emissions from powder coatings are so low that there is no equivalent control system. Control devices such as an incinerator or carbon adsorber cannot achieve a comparable emission level. As a consequence, basing the proposed standard on powder coatings would be more restrictive than using a coating having a typical or even low-VOC content with a capture system and control device. Moreover, since powder coatings have not been adequately demonstrated for all appliances under all conditions, under such a standard, any appliance for which no satisfactory powder coating is available could no longer be produced.

Process designs in other coating industries allow VOC emissions to be

more easily contained and delivered to control devices such as incinerators or organic-solvent recovery systems (i.e., carbon adsorption systems) than is possible in the appliance industry. A unique characteristic of this industry is the long flashoff time required to allow slow evaporation of the organic solvent and prevent subsequent cracking of the coating in the cure oven. As much as 40 percent of VOC emissions from the coating process may occur in the flashoff area, which may be either open or enclosed in a tunnel. To hood and vent a flashoff area that may be several hundred feet long and might otherwise be open would be impractical in most cases.

Although thermal incinerators could be applied to the spray booth, the spray booth exhaust stream is typically a high-volume stream with low VOC concentrations, and the control of VOC emissions from this exhaust stream would require a large amount of supplemental fuel. VOC emissions from the curing oven could also be captured for incineration, but curing oven emissions account for only about 20 percent of total VOC emissions from surface coating operations.

Catalytic incineration permits lower incinerator operating temperatures and requires less fuel than thermal incineration but still represents a significant increase in energy consumption over other control techniques. In addition, because oil firing tends to foul or mask the catalyst, the fuel used to preheat the exhaust gases must be a clean fuel such as natural gas or liquefied petroleum gas (LPG).

Generally, incineration techniques would be more costly than the techniques previously described. While these control methods have not been demonstrated in the large appliance sector, they have been used in other segments of the industrial finishing industry. Even though their use is not expected, an incineration control option has been analyzed with one of the regulatory alternatives discussed below.

Carbon adsorption has been used successfully to control VOC emissions in a number of industrial applications. However, its ability to control VOC emissions from curing ovens in appliance surface coating operations is uncertain because the high temperature of the exhaust stream would require that the gas stream be cooled before passage through the carbon bed. The high humidity of the exhaust stream from a water-wash spray booth would necessitate pretreatment to lower the relative humidity before a carbon adsorber could be effective. For these reasons, carbon adsorption has not been used in this industry, and it is not expected that it will be selected as a control technique for reducing VOC emissions. Nonetheless, the proposed standards would not preclude the use of carbon adsorption to comply with emission limitation.

Regulatory Alternatives

Low-organic-solvent-content or waterborne coatings, a change in application methods, capture systems and control devices, or combinations of the three can feasibly be used to control VOC emissions from appliance surface coating operations. Based on the use of these control methods, the following regulatory scenarios have been evaluated. Three regulatory alternatives were developed for prime coating operations, and four were established for topcoating operations.

Regulatory Alternative A–I for prime coating operations is to forego the development of an NSPS. In this case, prime coating operations would be subject only to regulations contained in revised SIPs. These new or revised regulations would be based mainly upon the CTG recommendations for controlling VOC emissions from large appliance surface coating operations. The CTG recommends a limit of 0.34 kilogram of organic solvent per liter of coating (minus water) (2.8 lb/gal), which is equivalent to a prime coat containing 62 percent solids by volume. However, the CTG does not stipulate a transfer efficiency, and consequently the no NSPS baseline is not known exactly. The estimated industry-average transfer efficiency is 60 percent. For this analysis, a 60-percent transfer efficiency has been assumed, and the no NSPS baseline is an emissions limit equal to that resulting from the application of a coating containing 62 percent (vol.) solids applied at a transfer efficiency of 60 percent.

Regulatory Alternative A–II for prime coating operations is the promulgation of an NSPS equivalent to the assumed CTG limit. This option would restrict VOC emissions from each prime coat operation to the level equivalent to that resulting from the application of a 62-percent (vol.) solids coating at a transfer efficiency of 60 percent. This level of emissions could be achieved through the use of a waterborne coating, or through a number of combinations of solids content and transfer efficiencies yielding an equivalent amount of emissions; e.g., 52 percent (vol.) solids applied at 90 percent transfer efficiency. Although lower than the rated efficiencies of some of the application equipment that will be used in new sources, the 60-percent transfer efficiency also approximates the efficiency of hand-held electrostatic equipment and can therefore be economically attained by all facets of the industry. Additionally, use of this transfer efficiency will allow appliance coaters some freedom in their approach to meeting the proposed standards. That is, if they have a higher transfer efficiency, they may apply a coating with a higher organic-solvent content.

Regulatory Alternative A–III for prime coat operations is a 55-percent (per volume of solids applied) reduction in VOC emissions from the assumed no NSPS baseline (Alternative A–I). This alternative is equivalent to the use of an EDP process containing 0.38 kilogram of VOCs per liter of solids in the input stream applied at a transfer efficiency of 95 percent.

Regulatory Alternative B–I for topcoat application, like Regulatory Alternative A–I, presumes that no NSPS is promulgated. The CTG makes no distinction between topcoat and prime coat operations, and the recommended limit is therefore 0.34 kilogram of organic solvent per liter of coating (minus water). Without the stipulation of a transfer efficiency, the topcoat no NSPS baseline, like the prime coat no NSPS baseline, is not known exactly. For this analysis, the no NSPS baseline is an emissions limit equal to that resulting from the application of a 62-percent (vol.) solids coating applied at an assumed 60-percent transfer efficiency.

Regulatory Alternative B–II for topcoat operations, like Regulatory Alternative A–II, is the promulgation of an NSPS equivalent to the assumed CTG limit. This alternative would restrict VOC emissions to the level equivalent to that resulting from the application of a 62-percent (vol.) solids top coat at a transfer efficiency of 60 percent. This emissions level could be achieved through the use of a number of combinations of solids content and transfer efficiency of organic-solvent-borne coatings or through the use of powder coatings.

Regulatory Alternative B–III for topcoat operations is a 30-percent reduction of VOC emissions (per volume of solids applied) from the no NSPS baseline (Alternative B–I). This alternative is equivalent to the use of a 70-percent (vol.) solids top coat applied at a transfer efficiency of 60 percent, although this emissions level could also be achieved through the use of a number of other combinations of solids content and transfer efficiency of organic-solvent-borne coatings or through the use of powder coatings. We believe

incineration of the oven exhaust is feasible in the appliance industry. Therefore, a control option consisting of a 65.5-percent (vol.) solids top coat applied at a transfer efficiency of at least 60 percent, coupled with an incinerator or other control device on the topcoat oven, has also been analyzed for this alternative.

Regulatory Alternative B–IV for topcoat operations would essentially eliminate VOC emissions and could only be achieved through the use of powder coatings (100 percent [vol.] solids).

Environmental, Energy, and Economic Impacts

Regulatory Alternative A–I (no NSPS) for prime coating operations represents the status quo and would create no incremental environmental impact, either beneficial or adverse. Because most States will be promulgating or revising regulations based on this CTG-recommended limit (0.34 kilogram of organic solvent per liter of coating, minus water), this level of emissions represents the baseline from which the environmental impact of other regulatory alternatives is assessed. Because the CTG-recommended limit does not specify a transfer efficiency, a transfer efficiency had to be assumed to complete a meaningful analysis. The estimated industry-average transfer efficiency of 60 percent was used for this purpose. Annual VOC emissions from prime coat operations totaled about 6,800 metric tons in 1976. By 1981, annual VOC emissions from prime coat operations will have been reduced to 1,700 metric tons. Anticipated growth in the industry will cause emissions to increase to 1,900 metric tons by 1986.

Regulatory Alternative A–II would restrict emissions to a level equivalent to that resulting from the use of a 62-percent (vol.) solids coating applied at a transfer efficiency of 60 percent. To the extent that the assumed 60-percent transfer efficiency used to calculate the baseline is correct, this alternative will have a negligible impact upon emissions. Adoption of this alternative would, however, permit tradeoffs between the solids content of the coating and the transfer efficiency of the application equipment.

Regulatory Alternative A–III for prime coat operations would hold VOC emissions to an increase of 4 percent between 1981 and 1986. If waterborne prime coats were applied by EDP, VOC emissions would total about 1,800 metric tons per year by 1986, a reduction of 100 metric tons per year from the no NSPS baseline.

Regulatory Alternative B–I for topcoat operations (no NSPS) is an assumed baseline for topcoat operations and is equivalent to a level that would result from the application of a 62-percent (vol.) solids coating at an assumed transfer efficiency of 60 percent. Annual VOC emissions from topcoat operations totaled about 8,300 metric tons in 1976. By 1981, annual emissions from topcoat operations will have been reduced to 2,100 metric tons. Anticipated growth in the industry will cause emissions to increase to 2,400 metric tons by 1986.

Regulatory Alternative B–II for topcoat operations, like Alternative A–II for prime coating, would restrict emissions to a level equivalent to that resulting from the use of a 62-percent (vol.) solids coating applied at a transfer efficiency of 60 percent. To the extent that the assumed 60-percent transfer efficiency used to calcuate the baseline is correct, this alternative will have a negligible impact upon emissions.

Regulatory Alternative B–III for topcoat operations, equivalent to the use of 70 percent (vol.) solids top coats applied at a transfer efficiency of 60 percent, would reduce topcoat emissions 200 metric tons per year by 1986. An equivalent decrease in VOC emissions would also result from the use of a 65.5-percent solids coating with an incinerator on the topcoat oven. This alternative would hold industrywide VOC emissions to an increase of 5 percent (100 metric tons per year) between 1981 and 1986.

Regulatory Alternative B–IV for top coating, the virtual elimination of VOC emissions, could only be achieved with a powder top coat and would reduce industrywide topcoat VOC emissions by 30 percent (about 750 metric tons) by 1986. However, because powder coatings are often used direct-to-metal (i.e., without a prime coat), the impact on total emissions would be considerably greater. The combination of Regulatory Alternative A–I or A–II and powder would reduce total emissions by 1,700 metric tons per year. Used in combination with Regulatory Alternative A–III, total emissions would be reduced by 1,850 metric tons per year.

Standards based on any of the regulatory alternatives for prime coat or topcoat operations would have little impact on water quality. All of the alternatives assume the greater use of waterborne or low-organic-solvent-content coatings. The greater use of waterborne coatings would increase the COD of the wastewater discharged from appliance surface coating operations. This increase results from the water-soluble organic solvents contained in the waterborne coatings. However, the COD increase would be minimal compared to current COD levels at plants using organic-solvent-based coatings and meeting existing State regulations. This increase would not require the installation of additional wastewater treatment facilities. However, these coating operations may be subject to regulations covering the discharge of wastewater from coating operations (Metal Finishing Point Source Category) under the Federal Water Pollution Control Act that are now scheduled for proposal in early 1981.

The efficiency of paint application is a significant factor in the quantities of water pollutants discharged because most paint solids not applied to the product (overspray) are trapped in the water curtain designed for this purpose. Because the transfer efficiency of spray painting would not decrease with the spraying of higher solids content coatings, no greater amounts of solids would be entrapped in spray booth water.

The incremental solid waste impact of any of the regulatory alternatives would also be negligible because the volume of paint sludge generated is approximately equal for all alternatives. However, these wastes have been defined as hazardous (40 CFR Part 261) and therefore must be disposed of in accordance with the regulations in 40 CFR Part 262.

Total energy requirements of the large appliance surface coating industry are estimated as 6.4 million GJ/yr (6.0×10^{12} Btu/yr) in 1981. Because approximately 80 percent of this energy is consumed during pretreatment, a process not affected by any of the regulatory alternatives, the net energy impact of each of the regulatory alternatives is minor. There are three regulatory alternatives with a noticeable impact: A–III (waterborne prime coat by EDP), B–IV (powder), both of which would reduce energy consumption, and B–III (incineration option), which would increase consumption. The dryoff oven between pretreatment and prime coat application is not needed when a waterborne prime coat is used. Therefore, a 75,000-GJ annual savings is possible under Regulatory Alternative A–III. Because the application of powder often eliminates the need for a prime coat, adoption of that alternative (B–IV) would result in an annual savings of 145,000 GJ. With 60 percent heat recovery, an incinerator on the topcoat oven (B.–III) would increase energy consumption by 70,000-GJ annually.

The economic impacts for each regulatory alternative were estimated using cost data for four model line configurations developed to be representative of those that would be

constructed during the 1981–1986 period in the absence of further air pollution regulations. Two line sizes correspond to small and large facilities in the household cooking equipment sector (Model plants 1 and 2) with annual production rates of 13,000 and 107,000 units per year, respectively. The remaining two line sizes represents facilities in the laundry equipment sector (Model plant 3; 657,000 units per year) and in the refrigerator/freezer sector (Model plant 4; 392,000 units per year).

A discounted cash flow approach was used to analyze the model plant costs and to determine the price impacts of each of the regulatory alternatives. This analysis was based on data consisting of the capital, installation, operating, and maintenance costs of the equipment that could be used to achieve compliance with each of the baseline levels of control and each of the regulatory alternatives. These cost data were obtained from manufacturers and vendors of coating equipment for the large appliance industry.

Regulatory Alternatives A–I and B–I—not promulgating an NSPS—would have no economic or price impacts on plants subject to revised SIP limitations based on CTG-recommended limits. Regulatory Alternatives A–II and B–II—promulgating an NSPS equivalent to the assumed CTG limit for both prime coats and top coats—would also have no economic or price impacts. Current total installed capital costs for a new plant meeting Regulatory Alternatives A–I and B–I or A–II and B–II are $397,000 for Model plant 1, $922,000 for Model plant 2, $2,930,000 for Model plant 3, and $2,305,000 for Model plant 4. The annualized operating costs for these plants are $488,000 for Model plant 1, $738,000 for Model plant 2, $2,700,000 for Model plant 3, and $2,100,000 for Model plant 4.

The capital costs for a new plant increase with Regulatory Alternatives A–III—a water-based coating applied by EDP—or B–III—either a 70-percent solids coating or a 65.5-percent solids coating with incineration of a topcoat oven. These increases range from 3.5 to 36.2 percent, depending on the combination. The capital costs of a new plant decrease from 5 to 40 percent with Regulatory Alternative B–IV—100 percent solids coatings. Annualized operating costs for Regulatory Alternative A–III decrease in Model plants 1 and 3 and increase in Model plants 2 and 4. The decrease in Model plant 1 results from the substitution of an automated process for a process that is labor intensive because of the structure of this model plant. Model plant 3, which produces laundry equipment and for which a prime coat is desired on interior as well as exterior surfaces, is ideally suited for EDP, and Regulatory Alternative A–III would therefore reduce annualized operating costs. Costs increase in Model plants 3 and 4 because of the additional coating deposited on interior surfaces; this additional coating is not desired and is not represented in the base case.

The powder topcoat alternative appears to have the lowest capital cost, giving firms an economic incentive to adopt this relatively new technology even in the absence of regulations. However, powder coatings have not been demonstrated for all appliance products that will be covered by this standard. If powder coatings were excluded for this reason, Model plants 1 and 3 could coat their appliances for the lowest cost with an EDP prime coat and a 62-percent or 70-percent solids top coat. Model plant 2 would be most profitable with a 62-percent solids prime coat and either a 62-percent or 70-percent solids top coat. The most profitable line configuration for Model plant 4 is a 62-percent solids prime coat and a 62-percent solids top coat.

The additional capital required to meet regulatory alternatives ranges from 0 to 36 percent of the baseline investment. If producers absorb the additional costs, the return on investment will fall by 0 to 7 percentage points from the baseline rate of return of 19 percent. If consumers absorb the additional costs, a product price increase of 0 to 1 percent is expected. In all cases EDP prime coat costs or incineration costs caused these impacts. The proposed standards, Regulatory Alternatives A–II and B–II, will cause no economic impact.

Best System of Emission Reduction

Promulgation of a prime coat standard equivalent to the assumed CTG limit (Regulatory Alternative A–II) would not significantly reduce VOC emissions. The energy and economic impacts would also be minimal. Even without dramatically decreasing emissions, however, this alternative has benefits. Standards of performance establish a degree of national uniformity that prevents States from attracting industries by relaxing air pollution standards relative to other States. They also improve the efficiency of case-by-case determinations of best available control technology (BACT) for facilities located in attainment areas and lowest achievable emission rates (LAER) for facilities located in nonattainment areas, by providing a starting point for these determinations. This improvement results from the process of developing standards of performance, which involves a comprehensive analysis of alternative emission control technologies and an evaluation and verification of emission test methods. This alternative is also advantageous because a minimum transfer efficiency dependent upon the solids content of the coating would be prescribed and tradeoffs between solids content and transfer efficiency permitted. Prime coat formulations of 62 percent (vol.) solids are available to manufacturers of all the affected appliance parts and products.

Alternatively, the application of a waterborne prime coat by EDP (Alternative A–III) would reduce VOC emissions from prime coat operations by 55 percent per volume of solids applied. However, as a dip process, it automatically coats all surfaces of the part and may result in the application of more solids than desired. Manufacturers of refrigerators, for example, commonly apply a prime coat to exterior surfaces only. As a result, even though EDP is the most effective control technology per volume of solids applied, adoption of this technology industrywide would decrease emissions by less than 200 metric tons per year by 1986 and would be more costly than techniques that would be used to meet Regulatory Alternative A–II and would yield only slightly lower levels of control. Another factor in the rejection of this alternative was the economic impact on small existing facilities that might become subject to the NSPS because of the reconstruction of a prime coat operation. EDP is expected to be adopted voluntarily in the laundry sector, where interior corrosion protection, and hence an interior prime coat, is desired and where this technique is an effective control technology.

The promulgation of an NSPS for topcoating operations equivalent to the assumed CTG limits (Regulatory Alternative B–II) would have a limited effect on VOC emission reduction beyond the no NSPS baseline. The benefits of the selection of this alternative are the same as those described for Regulatory Alternative A–II. The energy, environmental, and economic impacts of this alternative would be very similar to the impacts of the no NSPS alternative. Topcoat formulations of 62 percent solids that meet most performance specifications are currently available to manufacturers of appliance parts and products.

Regulatory Alternative B–III for topcoat operations is not achievable by all segments of the industry. Coatings

containing 70 percent (vol.) solids are available, but their use is restricted to specific applications. Among liquid coatings, the more stringent corrosion- and detergent-resistance requirements for dishwashers and laundry equipment can currently be met only through lower solids content coatings. Another means to achieve this level of control would be to use a 65.5-percent (vol.) solids top coat applied at a 60-percent transfer efficiency coupled with an incinerator on the topcoat oven. However, the costs of incineration are seen as excessive in light of the very small incremental emissions reduction achieved.

A powder top coat (Alternative B–IV) appears to achieve the highest reduction with the fewest energy requirements and least economic impact. Although powder coatings are available and have been demonstrated in many installations, it is the Administrator's judgment that powder coatings have not been adequately demonstrated for all appliances under all conditions; therefore, powder coatings were not selected as the best system of continuous emission reduction. Over the longer term, powder coatings appear to be a very attractive air pollution control alternative. The proposed standard would allow powder coatings to be used, because their VOC emissions are fewer than the proposed emission limitations.

Consideration of the environmental, energy, and economic impacts of each regulatory alternative, as discussed above, indicates that the best demonstrated system of continuous emission reduction achievable for all prime coat and topcoat operations is the application of a 62-percent solids coating applied at a transfer efficiency of 60 percent (A–II and B–II) or an equivalent combination of solids content and transfer efficiency. Unlike the control techniques capable of meeting the levels of Regulatory Alternatives A–III, B–III, and B–IV, the use of combinations of coatings and application equipment that will meet Regulatory Alternatives A–II and B–II has been demonstrated for all segments of the appliance surface coating industry with reasonable economic and other impacts.

Selection of Format for the Proposed Standards

A number of different formats could be selected for the proposed standards. The format selected should be compatible with any of the control systems that may be used to comply with the proposed standards; i.e., waterborne, solvent-borne, or powder coatings applied by several different methods and with control devices.

The formats considered were emission limits expressed by the mass of VOCs per volume of coating (less water), the mass of VOCs per unit of surface area coated at a specific coating thickness, and the mass of VOCs per volume of coating solids applied to the part.

For determination of compliance with a prescribed mass of VOCs per volume of coating (less water), the following data would be required: volume of coating used during a specified interval, organic-solvent content of the coating, and density of organic solvent. These data can be obtained from company records or the coating manufacturer. By specifying only the maximum organic-solvent content of the coating, however, this format allows no transferability between organic-solvent content and transfer efficiency. That is, no allowance is made for the reductions in VOC emissions gained from improved transfer efficiency.

The format, mass per unit area at a specific film build, would require the following data to determine compliance: volume of coating used during a specified interval, organic-solvent content of the coating, density of organic solvent, and area coated during the specified interval. The volume of coating used and the number of appliances produced are available from company records. The area coated can be determined by multiplying the number of appliances produced by the area coated per appliance. Because appliances have rather simple configurations, surface area can be determined easily. The mass-per-unit-area format is advantageous primarily because knowledge of transfer efficiency is not necessary to determine compliance. In addition, this format would allow the owner or operator at least as much flexibility as any other in selecting a control method. This format may be disadvantageous primarily because it requires specification of film thickness. Appliances are coated at different thicknesses depending upon the need for durability and detergent resistance of the unit. Selection of a single film thickness may not be equitable to all segments of the industry, while selection of two or more film thicknesses would result in an unnecessarily complicated standard.

The problems associated with a format that specifies a film thickness could be overcome with a format that allows emissions proportional to the thickness of the coating. Mass of VOCs per unit of surface area coated per unit of film thickness is an example of this format. The only additional information required to determine compliance would be the film thickness. Variations in thickness, however, would necessitate the use of complex statistical methods to determine average film thickness with a reasonable degree of reliability. Recordkeeping would be burdensome, and enforcement would be difficult.

A format of mass of VOCs per unit volume of applied coating solids would require the following data to determine compliance: volume of coating used, organic-solvent content of the coating, density of the organic solvent, solids content of the coating, and the transfer efficiency of the application method. With this format, a transfer efficiency must be measured or designated for each application method. With a specified transfer efficiency, the remaining data can be determined from company records from coating analyses, or from the coating manufacturer. Because of the relative simplicity, universal applicability, and ease in determining compliance, this format was selected for the proposed standards.

Selection of Numerical Emission Limits

The selection of the numerical emission limits in the proposed standards directly follows the selection of Regulatory Alternatives A–II and B–II as the best systems of continuous emissions reduction for prime coating and topcoating operations, respectively. The proposed standards would limit VOCs emissions to 0.90 kilogram per liter of coating solids applied to an appliance part. The limit was calculated as follows:

Coating formulation: 62 percent (vol.) solids
38 percent (vol.) organic solvent

Average organic-solvent density: 0.88 kg/ℓ (7.36 lb/gal)

Transfer efficiency: 60 percent

$$\text{Mass of VOCs per unit volume solids} = \frac{0.38 \times 0.88}{0.62} = 0.54 \text{ kg/ℓ}$$

$$\text{Mass of VOCs per unit volume of solids applied} = \frac{0.54}{0.60} = 0.90 \text{ kg/ℓ of coating solids applied}$$

Method of Determining Compliance

The procedure for determining compliance with the proposed standard is complicated because of the different control techniques that may be used by the plant owner or operator. The following multistep procedure would be used.

1. Determine the VOC emissions from each prime coat and topcoat operation during 1 calendar month. The owner or operator may obtain the data necessary to determine VOC emissions from company records, from formulation data supplied by the manufacturer of the coating, or through an analysis of each coating or input stream, using Reference Method 24.

2. Select the appropriate transfer efficiency for each surface coating operation.

3. Calculate the mass of VOC emissions per unit volume of applied coating solids for each surface coating operation. If after a 1-month period, the value obtained is equal to or less than specified emission limit for that surface coating operation, the owner or operator would be in compliance. Following the initial compliance test period, the owner or operator would repeat this calculation monthly. However, if the VOC content per unit volume of coating solids of each coating, as applied, is less than the maximum allowed for the lowest transfer efficiency in the affected facility, the calculation will not be required.

4. If incineration is used to comply with the standard, calculate monthly the uncontrolled VOC emissions as in (3) above. Calculate the destruction efficiency of the incinerator(s) by sampling upstream and downstream of the control device, as described in the proposed standard. Determine the capture efficiency, as described in the proposed standard. The product of the two efficiencies gives the reduction efficiency of the control system. The value of the reduction efficiency determined during the initial compliance testing period need not be recalculated each month, as long as no pertinent conditions change. The actual controlled emissions are determined by using the uncontrolled emissions and the reduction efficiency, as shown in the equation in the proposed standard.

5. If an organic-solvent recovery system is used, calculate monthly the uncontrolled VOC emissions as in (3) above. Then calculate the mass of VOCs recovered by the system. The ratio of recovered emissions to uncontrolled emissions is the reduction efficiency for the control system. The actual controlled emissions are determined using the uncontrolled emissions and the reduction efficiency, as shown in the equation in the proposed standard.

Two types of violations may occur at a source that complies by using incineration in conjunction with low-organic-solvent coatings. The first is an increase in coating VOC content above the level the incinerator can handle, and the second is improper operation and maintenance of the incinerator. These two types of violations are discussed below.

When incineration is used as the method of compliance, the performance test consists of determining the mass of controlled VOC emissions per unit volume of applied coating solids for the preceding 30 days. If these emissions exceed 0.90 kg VOC per liter of coating solids applied, the source will be in violation of Section 60.452. The source may demonstrate, through another compliance test, that its incinerator(s) can achieve a higher destruction efficiency than has been previously demonstrated, if it wishes to apply a coating with a higher organic-solvent content.

A second type of violation may be triggered by a repeated pattern of incinerator temperature fluctuations. The initial compliance test will establish the combustion temperature needed to achieve a particular destruction efficiency. If during the coating operation continuous monitoring data or reports show repeated drops in temperature of more than 3 hours duration, the source could be in violation of 40 CFR 60.11(d), which requires proper operation and maintenance of control equipment. If a source's continuous monitor shows a drop in temperature, the Administrator may require that a performance test be conducted at the lower temperature.

Selection of Performance Test Methods

Reference Method 24, "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coating" (45 FR 65956), leads to a determination of VOC content of coating material measured as mass of volatile organics per unit volume of coating solids. For each surface coating operation, Reference Method 24 would be used to analyze the VOC content of each coating. However, the owner or operator is provided the alternative of obtaining these data from formulation data supplied by the manufacturer of the coating. Additional data may be required from company records. Equations provided in the proposed standards would enable the owner or operator to calculate the VOC emissions. Reference Method 25, "Determination of Total Gaseous Nonmethane Organic Emissions as Carbon" (45 FR 65956), is included in the proposed standards and is used in determining the destruction efficiency achieved by an incinerator.

Modification/Reconstruction Considerations

A modification is defined as any physical or operational change to an existing facility that results in an increased emission rate of any pollutant to which the standard applies (40 CFR 60.14). Upon modification, an existing facility becomes an affected facility and, therefore, subject to the standard. Aproximately 160 affected facilities are expected to be subject to the proposed standards in the first 5 years after promulgation. It is anticipated that 50 percent of the 160 affected facilities will be coating operations that have been modified or reconstructed. Alterations characteristic of the appliance industry that could increase emissions may include an added coating station, changes in coating specifications, a change from high- to low-solids coatings, the use of a higher density organic solvent, increased film thickness, or an increase in production capacity. Any such change might cause a facility to be subject to the standard unless emissions were concurrently reduced elsewhere in the plant.

A reconstruction is defined in 40 CFR 60.15 as any replacement of components of an existing facility to the extent that: (1) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable new facility, and (2) it is technologically and economically feasible to meet the applicable standards. An existing facility designated by the Administrator as reconstructed is subject to the standard. Reconstructions characteristic of the appliance industry would probably result from changes in application equipment to accommodate a change in coating; e.g., conventional to high-solids, waterborne, or powder coatings.

The proposed standards contain no

exemptions due to the modification or reconstruction of existing coating lines, which are expected to be the focus of industry growth during the coming years. Because the proposed standards are based on the use of coatings that are demonstrated and applicable throughout the industry and could be achieved by a wide combination of conventional methods or techniques, the impact of modification and reconstruction provisions has been significantly lessened.

Selection of Monitoring Requirements

Monitoring requirements are normally included in standards of performance to ensure that emission control requirements are met and that control devices are properly operated and maintained.

The owner or operator would be required to calculated and record the VOC emissions per unit volume of applied solids from each affected facility for each calendar month. Each monthly calculation would be considered a performance test. Where direct incineration is used to comply with the proposed standards, a monitoring device would be required to continuously record the combustion temperature of the control device. If catalytic incineration is used, the owner or operator would install a monitoring device to continuously record the gas temperature both upstream and downstream of the catalyst bed to verify the activity of the catalyst.

Impact of Reporting Requirements

A reports impact analysis for the appliance surface coating industry was prepared in response to the U.S. Environmental Protection Agency (EPA) guidelines for implementing Executive Order 12044 (44 FR 30988, May 29, 1979). The purpose of the analysis is to estimate the economic impact of the reporting and recordkeeping requirements that would be imposed by the proposed standards and by those appearing in the General Provisions of 40 CFR Part 60. Included in the analysis are the rationale for the selection of the proposed requirements, an evaluation of the major alternatives considered prior to the selection of the proposed requirements, and a description of the information required by the General Provisions and by the proposed standards. A copy of the reports impact analysis is included in Subcategory II–I of the appliance surface coating docket (EPA Docket No. OAQPS A–80–6).

Based on the reports impact analysis, a total of 40 industry person-years would be required to comply with the recordkeeping and reporting requirements through the first 5 years of applicability.

Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contract EPA at the address given above (see **ADDRESSES** section). Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed by Section 111 of the Clean Air Act, establishment of standards of performance for large appliance surface coating operations was preceded by the Administrator's determination (44 FR 49222, August 21, 1979) that these sources contributed significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comments on all aspects of the proposed standards including technological issues, monitoring requirements, and proposed test methods.

One of the issues to be resolved during promulgation of a final rule concerns the definition of an appliance part or product that would be subject to the proposed standards. The proposed standards were based upon analyses of data pertaining to the surface coating of traditional household appliances such as cooking equipment, laundry equipment, refrigerators, freezers, dishwashers, water heaters, and trash compactors. Recent analyses of industry data indicate that other appliances may be surface coated by the same methods as these traditional large appliance products. The other products include items such as fans, air purifiers, humidifiers, dehumidifiers, water softeners, baseboard and room heaters, furnaces, air-conditioning equipment, dry cleaning equipment, vacuum cleaners, and interior lighting fixtures. Because there is no apparent technical reason to exclude these products from the proposed standards and because these products would not be subject to other standards under development by the Agency, the definition of appliance has been expanded to include these products. Comments are specifically invited on the following:

- The method(s) of coating application traditionally used to coat these appliances,
- Other product(s) to be included or excluded from the standards because of significant differences in coating application equipment or formulations, and
- The economic impact of the proposed standards and whether it would result in any plant closure.

Information regarding the number of manufacturers producing these products, differences in coating formulations or equipment, and present and forecasted production is particularly invited.

In addition, the Administrator specifically invites comments concerning the reporting requirements of the proposed standards. Any comment submitted to the Administrator should contain specific information and data pertinent to an evaluation of the magnitude and severity of any adverse impact and should suggest alternative courses of action to avoid this impact. Recommended alternative reporting requirements should contain complete instructions and should state all the reasons why the recommended requirements would be considered an improvement.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

"* * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

Although emission control technology may be available to reduce emissions below levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has the potential for requiring) imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" (LAER) for new or modified sources located in nonattainment areas; i.e., areas where statutorily mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed in an area where ambient pollutant concentrations exceed the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level that reflects LAER, as defined in Section 171(3) for such category of source. The statute defines LAER as the rate of emissions based on the following, whichever is more stringent:

(A) The most stringent emission limitation contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) The most stringent emission limitation achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source preformance standard.

A similar situation may arise under the prevention of significant deterioration air quality provisions of the Act (Part C). These provisions require that certain sources (referred to in Section 169(1) employ BACT as defined in Section 169(3) for all pollutants regulated under the Act. BACT must be determined on a case-by-case basis, with energy, environmental, and economic impacts, and other costs taken into account. In no event, may the application of BACT result in emissions of pollutants that exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, SIPs approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of the NAAQS designed to protect public health and welfare. For this purpose, SIPs must, in some cases, require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, emission control technology improvements, and reporting requirements. The reporting requirements in these standards will be reviewed as required under EPA's sunset policy for reporting requirements in standards.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered when the proposed standards were formulated to ensure that they would represent the best system of emission reduction, considering costs. The economic impact assessment is included in the Background Information Document.

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend 40 CFR Part 60 by adding a new subpart SS as follows:

Subpart SS—Standards of Performance for Industrial Surface Coating: Appliances

Sec.

60.450 Applicability and designation of affected facility.
60.451 Definitions.
60.452 Standards for volatile organic compounds.
60.453 Performance test and compliance provisions.
60.454 Monitoring of emissions and operations.
60.455 Reporting and recordkeeping requirements.
60.456 Test methods and procedures.

Authority: Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart SS—Standards of Performance for Industrial Surface Coating: Appliances

§ 60.450 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to each surface coating operation in an appliance surface coating line.

(b) The provisions of this subpart apply to each affected facility identified in paragraph (a) of this section that commences construction, modification, or reconstruction after December 24, 1981.

§ 60.451 Definitions.

(a) All terms used in this subpart not defined are given meaning in the Act or in Subpart A of this part.

"Applied coating solids" means the coating solids that adhere to the surface of the appliance part being coated.

"Applicance part" means any organic surface-coated metal lid, door, casing, panel, or other interior or exterior metal part or accessory that is assembled to form an appliance product.

"Appliance product" means any organic surface-coated metal range, range hood, oven, microwave oven, refrigerator, refrigerated display case, freezer, washer, dryer, dry cleaning equipment, dishwasher, water heater, trash compactor, vacuum cleaner, ice maker, water softener, or interior lighting fixture manufactured for household, commercial, or recreational use. "Appliance product" also means any air purifier, room heater, baseboard heater, dehumidifier, humidifier, fan, furnace, window air conditioner, unitary air conditioner, or heat pump manufactured for household use.

"Appliance surface coating line" means that portion of an appliance part of product manufacturing or assembly plant engaged in the application and curing or organic surface coatings on appliance parts or products.

"Coating application station" means that portion of the appliance surface coating operation where a prime coat or a top coat is applied to the appliance part or product. The coating application station consists of the dip tank, spray booth(s), or flow unit.

"Curing oven" means a device that uses heat to dry or cure the coating(s) applied to appliance parts or products.

"Electrodeposition" (EDP) means a method of coating application in which the appliance part or product is submerged in a tank filled with coating material suspended in water and an electrical field is used to deposit the material on the part or product.

"Flashoff area" means the portion of an appliance surface coating line between the coating application station and the curing oven.

"Spray booth" means the structure housing automatic or manual spray application equipment where a coating is applied to appliance parts or products.

"Surface coating operation" means the system on an appliance surface coating line used to apply and dry or cure an organic coating on the surface of the appliance part of product. The surface coating operation may be a prime coat or a topcoat operation and includes the coating application stations(s), flashoff area, and curing oven.

"Transfer efficienty" means the ratio of the amount of coating solids deposited onto the surface of an appliance part of product to the total amount of coating solids used.

"VOC emissions" means the mass of volatile organic compounds (VOCs), expressed as kilograms of VOCs per liter of applied coating solids, emitted from an appliance surface coating operation.

(b) All symbols used in this subpart not defined below are given meaning in the Act or Subpart A of this part.

B = uncontrolled VOC emissions per unit volume of coating solids, in kilograms per liter.

C_a = the concentration of VOCs in a vent after a control device, in parts per million by volume (as carbon).

C_b = the concentration of VOCs in a vent before a control device, in parts per million by volume (as carbon).

C_f = the concentration of VOCs in a vent not routed to a control device, in parts per million by volume (as carbon).

D_c = density of coating (or input stream), in kilograms per liter.

D_d = density of organic solvent used for dilution, in kilograms per liter.

D_r = density of recovered organic solvent, in kilograms per liter.

E = the efficiency of a control device (fraction).

F = the capture efficiency of a control device (fraction).

G = uncontrolled VOC emissions per unit volume of applied coating solids, in kilograms per liter.

L_c = volume of coating used, in liters.

L_d = volume of organic solvent used for dilution, in liters.

L_r = volume of organic solvent recovered, in liters.

L_s = volume of solids consumed, in liters.

M_d = mass of VOCs in dilution solvent, in kilograms.

M_o = mass of VOCs in coating, in kilograms.

M_r = mass of VOCs recovered, in kilograms.

N = weighted average of actual VOC emissions per unit volume of solids applied, in kilograms per liter.

Q_a = the volumetric flow rate through a vent after a control device, in dry standard cubic meters per hour.

Q_b = the volumetric flow rate through a vent before a control device, in dry standard cubic meters per hour.

Q_f = the volumetric flow rate in a vent not routed to a control device, in dry standard cubic meters per hour.

R = the efficiency of a control device.

T = transfer efficiency.

V_s = volume fraction of nonvolatile matter in coating (or input stream) in liters per liter.

W_o = weight fraction of nonaqueous volatile matter of coating, in kilograms per kilogram.

§ 60.452 Standards for volatile organic compounds.

On or after the date on which the performance test required by § 60.8 is completed, no owner or operator of an affected facility subject to the provisions of this subpart shall discharge or cause the discharge of VOC emissions that exceed 0.90 kilogram of VOCs per liter of applied coating solids from any surface coating operation on an appliance surface coating line.

§ 60.453 Performance test and compliance provisions.

(a) Sections 60.8(d) and (f) do not apply to the performance test procedures required by this subpart.

(b) Except as provided in paragraph (c) of this section, each owner or operator shall determine compliance with § 60.452 by calculating and recording the weighted average of the VOC emissions per liter of applied coating solids from each affected facility during a calendar month. Following this initial performance test period, the owner or operator shall calculate and record the VOC emissions from each affected facility for each calendar month. For this subpart, each monthly calculation is considered a performance test. Where coating is applied by spray application, the owner or operator shall obtain the information necessary to calculate the weighted average from formulation data supplied by the manufacturer of the coating or by an analysis of each coating, by Reference Method 24 or by an alternative or equivalent method acceptable to the Administrator. Where a coating is applied by dip coating, flow coating, or EDP, the owner or operator shall obtain the information necessary to calculate the weighted average from formulation data supplied by the manufacturer of the coating or by an analysis of each input stream by Reference Method 24 or an alternative or equivalent method acceptable to the Administrator. Coating and organic-solvent usage data may be obtained from company records. If formulation data supplied by the manufacturer of the coating are used to determine VOC emissions from an affected facility, the Administrator may require an analysis of each coating (or input stream) by Reference Method 24. Where more than one application method is used within a single surface coating operation, the owner or operator shall determine the composition and volume of each coating applied by each method through a means acceptable to the Administrator.

(1) Select the transfer efficiency for the applicable method of coating application from Table 1. If the owner or operator can demonstrate to the satisfaction of the Administrator that other transfer efficiencies are appropriate, the Administrator will approve their use on a case-by-case basis.

(2) For each affected facility where the coating is analyzed prior to dilution,

(i) The mass of VOCs is calculated by the following equation:

$$M_o + M_d = \sum_{i=1}^{n} L_{c_i} D_{c_i} W_{o_i} + \sum_{j=1}^{m} L_{d_j} D_{d_j}$$

(ii) The volume of solids consumed is determined by the following equation:

$$L_s = \sum_{i=1}^{n} L_{c_i} V_{s_i}$$

(iii) The weighted average transfer efficiency is calculated by the following equation:

$$T = \frac{\sum_{i=1}^{n} \sum_{k=1}^{m} L_{c_{ik}} V_{s_{ik}} T_k}{L_s}$$

(iv) Compliance with § 60.452 is determined by the following relationships:

$$G = \frac{M_o + M_d}{L_s T}$$

$$N = G$$

$$N < 0.90 \text{ kg/}\ell ,$$

where

i denotes each coating (or input stream) before dilution.

j denotes each dilution solvent.

k denotes each application station.

n or m denotes the total number of summed components.

(3) For each affected facility where the coating is analyzed after dilution,

(i) The mass of VOCs is calculated by the following equation:

$$M_o + M_d = \sum_{i=1}^{n} L_{c_i} D_{c_i} W_{o_i} .$$

(ii) The volume of solids consumed is determined by the following equation:

$$L_s = \sum_{i=1}^{n} L_{c_i} V_{s_i} .$$

(iii) The weighted average transfer efficiency is calculated by the following equation:

$$T = \frac{\sum_{i=1}^{n} \sum_{k=1}^{m} L_{c_{ik}} V_{s_{ik}} T_k}{L_s} .$$

(iv) Compliance with § 60.452 is determined by the following relationships:

$$G = \frac{M_o + M_d}{L_s T}$$

$$N = G$$

$$N < 0.90 \text{ kg/}\ell ,$$

where

i denotes each coating (or input stream) as applied.

k denotes each application solvent.

n or m denotes the total number of summed components.

(c) For each affected facility where the VOC content per unit volume of coating solids (B_i) of each coating as applied is equal to or less than the maximum allowable VOC content specified in Table 2 for the lowest transfer efficiency of any method of application in the affected facility, the owner or operator is not required to calculate VOC emissions for each calendar month. The VOC content per unit volume of solids for each coating is calculated by the following equations:

$$B_i = \frac{D_{c_i} W_{o_i}}{V_{s_i}} ,$$

where

i denotes a coating (or input stream) to which no organic dilution solvent is added or which is analyzed after dilution,

or

$$B_i = \frac{\sum_{i=1}^{n} L_{c_i} D_{c_i} W_{o_i} + \sum_{j=1}^{n} L_{d_j} D_{d_j}}{\sum_{i=1}^{n} L_{c_i} V_{s_i}} ,$$

where

i denotes each coating (or input stream) before dilution.

j denotes each dilution solvent.

n or m denotes the total number of summed components.

Table 1.—*Transfer efficiencies*

Application method	Transfer efficiency (T_k)
Air-atomized spray	0.40
Airless spray	0.45
Manual electrostatic spray	0.60
Flow coat	0.85
Dip coat	0.85
Nonrotational automatic electrostatic spray	0.85
Rotating head automatic electrostatic spray	0.90
Electrodeposition	0.95
Powder	0.95

Table 2.—*Maximum allowable VOC content*

Transfer efficiency (T)	Maximum VOC content (B_i) (kg VOC/l solids)
0.40	0.36
0.45	0.40
0.50	0.45
0.55	0.50
0.60	0.54
0.65	0.58
0.70	0.63
0.75	0.68
0.80	0.72
0.85	0.76
0.90	0.81
0.95	0.86

(d) For each affected facility where compliance is achieved through the use of an add-on emission control system that reduces emissions through the destruction of VOCs, the owner or operator shall calculate the uncontrolled VOC emissions (G) from each such affected facility during each calendar month by the procedures specified in paragraph (b) of this section. The owner or operator shall also determine the controlled VOC emissions (N) and compliance with § 60.452 by the following procedures:

(1) Determine the destruction efficiency of a control device (E_z) using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the device by the following equation:

$$E_z = \frac{\sum_{i=1}^{n} Q_{b_i} C_{b_i} - \sum_{j=1}^{m} Q_{a_j} C_{a_j}}{\sum_{i=1}^{n} Q_{b_i} C_{b_i}} .$$

In subsequent months, the most recently determined VOC destruction efficiency may be used for the performance test, providing control device and capture system operating conditions have not changed. Repeat this portion of the performance test when directed by the Administrator or when it is desirable to operate the control device at conditions different from the initial performance test.

(2) Determine the fraction of total VOCs emitted by an affected facility that enters a particular control device (F_z) by using the following equation:

$$F_z = \frac{\sum_{i=1}^{n} Q_{b_i} C_{b_i}}{\sum_{i=1}^{n} Q_{b_i} C_{b_i} + \sum_{k=1}^{m} Q_{f_k} C_{f_k}} .$$

The values of Q_f and C_f for vents not routed to any control device shall be determined by a method acceptable to the Administrator.

(3) Determine the overall reduction efficiency of all control devices for one affected facility by the following equation:

$$R = \sum_{z=1}^{n} E_z F_z .$$

(4) Determine compliance with § 60.452 by the following relationship:

$N = G(1-R) < 0.90$ kg/l,

where

i denotes each vent before a control device.

j denotes each vent after a control device.

k denotes each vent not routed to a control device.

z denotes each control device.

n or m denotes the total number of components summed.

(e) For each affected facility where compliance is achieved through the use of a control device that reduces emissions through the recovery of organic solvent, the owner or operator shall calculate the uncontrolled VOC emissions (G) from each affected facility during each calendar month by the procedures specified in paragraph (b) of this section. The owner or operator shall also determine the controlled VOC emissions (N) and compliance with § 60.452 by the following procedure. For this subpart, each monthly calculation is considered a performance test. Where one organic-solvent recovery system serves more than one affected facility, the owner or operator shall apportion the organic solvent recovered among the affected facilities in direct proportion to the mass of uncontrolled VOCs emitted from each affected facility. Controlled VOC emissions are determined by the following procedures:

(1) Calculate the mass of VOCs recovered by the following equation:

$M_r = L_r D_r$.

(2) Determine the overall reduction efficiency for an affected facility:

$$R = \frac{M_r}{M_o + M_d} .$$

(3) Determine compliance with § 60.452 by the following relationship:

$N = G(1-R) < 0.90$ kg/l.

§ 60.454 Monitoring of emissions and operations.

The owner or operator of an affected facility that uses a capture system and an incinerator to comply with the emission limits specified under § 60.452 shall install, calibrate, maintain, and operate temperature measurement devices as prescribed below:

(a) Where thermal incineration is used, a temperature measurement device shall be installed in the firebox. Where catalytic incineration is used, a temperature measurement device shall be installed in the gas stream immediately before and after the catalyst bed.

(b) Each temperature measurement device shall be installed, calibrated, and maintained according to the manufacturer's specifications. The device shall have an accuracy of the greater of 0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5° C.

(c) Each temperature measurement device shall be equipped with a recording device so that a permanent continuous record is produced.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.455 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to the provisions of this subpart shall include the following data in the report of the initial performance test required under § 60.8(a) and in the reports of all subsequent performance tests where either the capture efficiency or the destruction efficiency of an incineration system is determined:

(1) For each affected facility where the VOC content per unit volume of coating solids (B_i) of each coating as applied is equal to or less than the maximum allowable VOC content specified in Table 2 for the lowest

transfer efficiency of any application method in use in the affected facility:

(i) The minimum transfer efficiency of any coating application equipment used, and

(ii) The maximum VOC content per volume of coating solids, B_i, as calculated in § 60.453(c), of any coating applied during the month.

(2) Where compliance is achieved through the use of an incineration system:

(i) The average combustion temperature (or the average temperature upstream and downstream of the catalyst bed), and

(ii) A description of the method used to establish the amount of VOCs captured and sent to the incinerator.

(b) Following the initial performance test report, each owner or operator shall report within 10 calendar days each instance in which the weighted average of the mass of VOCs per unit volume of coating solids applied, N, from any affected facility is greater than the limit specified in § 60.452.

(c) Where compliance with § 60.452 is achieved through the use of an incineration system, the owner or operator shall report quarterly the following information:

(1) For thermal incinerators, all 3-hour periods of coating operation during which the average combustion temperature was more than 28° C. (50° F) below the average combustion temperature of the device during the most recent performance test at which destruction efficiency was determined.

(2) For catalytic incinerators, all 3-hour periods of coating operation during which the average temperature of the device immediately before the catalyst bed is more than 28° C (50° F) below the average temperature of the device during the most recent performance test at which destruction efficiency was determined. The owner or operator shall also report all 3-hour periods of coating operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test at which destruction efficiency was determined.

(3) Negative reports are required quarterly if incinerator parameters remain within the limits outlined in paragraphs (i) and (ii), above.

(d) Each owner or operator subject to the provisions of this subpart shall maintain at the source, for at least 2 years, records of all data and calculations used to determine VOC emissions from each affected facility. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain, at the source, daily records of the incinerator combustion chamber temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed. Where compliance is achieved through the use of a solvent recovery system, the owner or operator shall maintain at the source daily records of the amount of solvent recovered by the system for each affected facility.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.456 Test methods and procedures.

(a) The reference methods in Appendix A to this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.452 as follows:

(1) Method 24 or formulation data supplied by the manufacturer of the coating to determine the VOC content of a coating. Procedures to determine VOC emissions are provided in § 60.453.

(2) Method 25 for the measurement of the VOC concentration in the gas stream vent.

(3) Method 1 for sample and velocity traverses,

(4) Method 2 for velocity and volumetric flow rate,

(5) Method 3 for gas analysis, and

(6) Method 4 for stack gas moisture.

(b) For Method 24, the coating sample must be a 1-liter sample taken into a 1-liter container at a point where the sample will be representative of the coating material.

(c) For Method 25, the sampling time for each of three runs is to be at least 60 minutes and the minimum sample volume is to be at least 0.003 dscm except that shorter sampling times or smaller volumes, when necessitated by process variable or other factors, may be approved by the Administrator.

(d) The Administrator will approve testing of representative stacks on a case-by-case basis if the owner or operator can demonstrate to the satisfaction of the Administrator that testing of representative stacks yields results comparable to those that would be obtained by testing all stacks.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

[FR Doc. 80-40137 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-24-M

40 CFR Part 60

[AD—FRL 1625-8a]

Standards of Performance for New Stationary Sources; Priority List; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Amendment to Priority List.

SUMMARY: The priority list of major source categories for which EPA is to promulgate NSPS includes the category "Industrial Surface Coating: Large Appliances." Studies of the appliance manufacturing industry have revealed that the operations, processes, and emissions characteristic of the coating of certain comparatively small appliances are similar, and in many cases identical, to those associated with larger appliance surface coating. Because there is therefore no reason to distinguish among the emissions from appliance surface coating operations based solely on the size of the appliance being coated, it is appropriate to treat surface coating of all types of appliances as a single source category for the purpose of establishing standards of performance. The Administrator is therefore proposing to amend the priority list to aggregate all appliance surface coating operations in one source category. The proposed amendment is based on the Administrator's judgment that emissions from one appliance surface coating operations contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed amendment.

DATES: *Comments.* Comments must be received on or before February 23, 1981.

Public hearing. The public hearing will be held on January 28, 1981 beginning at 9:00 a.m.

Request to speak at hearing. Persons wishing to present oral testimony at the hearing should contact EPA by January 21, 1981.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130). Attention: Docket No. A-80-6, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public hearing. The public hearing for the proposed standards of performance for appliance surface coating operations will be held at O.A. Auditorium, R.T.P.,

North Carolina and comments will be received at this time on the proposed amendment to the priority list. Persons wishing to present oral testimony should notify Mrs. Naomi Purkie, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5331.

Background Information Document. Background information on the emissions from the appliance surface coating industry may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to *Industrial Surface Coating: Appliances—Background Information for Proposed Standards*, EPA–450/3–80–037a.

Docket. A docket, number A–80–6, containing information used by EPA in development of the standards of performance for the appliance surface coating industry, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Emission Standards and Engineering Division (MD–13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5421.

SUPPLEMENTARY INFORMATION:

Proposal to Amend Priority List

Under Section 111 of the Clean Air Act, EPA is required to develop standards of performance for new stationary sources which the Administrator determines may contribute significantly to air pollution which may reasonably be anticipated to endanger public hearlth or welfare. Section 111(f) of the Act, as amended in 1977, requires that the Administrator promulgate a priority list of categories of major stationary sources for which standards of performance for new sources are to be promulgated.

In developing priorities, Section 111 specifies that the Administrator consider (1) the quantity of emissions from each source category, (2) the extent to which each pollutant endangers public health or welfare, and (3) the mobility and competitive nature of each stationary source category.

The priority list, which identifies major source categories in order of priority for development of regulations, was proposed on August 31, 1978, and promulgated, after revisions, on August 21, 1979 (40 CFR 60.16, 44 FR 49222). Of the 59 source categories on the list, large appliance surface coating operations are listed as number 28.

Each source category should be broad enough in scope to encompass emissions from all similar processes and operations. Studies of the appliance manufacturing industry have revealed that the operations, processes, and emissions associated with surface coating operations for appliances of all sizes are similar enough to warrant treatment as a single source category.

Many appliances not customarily considered to be large household appliances are similar in size and shape to common household appliances such as refrigerators, freezers, washers, dryers, and ranges. The coating application methods—flow coat, dip coat, electrodeposition, and air, airless, and electrostatic spray—are identical. These additional appliance coating operations use coating materials similar to those used in large appliance coating operations. Coating performance specifications are also similar except for slight variations depending upon whether the unit is designed for indoor or outdoor use. Therefore, these operations produce the same types, and proportionately the same quantities, of VOC emissions as large appliance surface coating operations.

As a result, there is no reason to distinguish among appliance surface coating operations based solely on the size of the appliance passing through the coating process. It is therefore more appropriate to treat surface coating of all appliances as a single category.

In promulgating the priority list, coating operations for large appliances were found to contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Accordingly, the category of surface coating operations for all appliances, which encompasses large appliance surface coating operations, also constitutes a major source category and will be treated as a single category of sources for the purpose of establishing standards of performance.

Proposed standards of performance for appliance surface coating operations appear elsewhere in this issue of the **Federal Register**. This proposed rulemaking is issued under the authority of Sections 111 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7411 and 7601(a)).

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend 40 CFR Part 60, § 60.16, by revising item 28 to read as follows:

§ 60.16 Priority list.

* * * * *

28. Industrial Surface Coating: Appliances.

* * * * *

(Secs. 111, 301(a), Clean Air Act as amended (42 U.S.C. 7411, 7601(a))

[FR Doc. 80–40136 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–24–M

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40 CFR Part 81

[A–5–FRL 1711–2]

Proposed Section 107 Redesignation for Maryland

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: The State of Maryland has revised its list of air quality attainment designations for two cities within the State with respect to carbon monoxide (CO). The State has changed the designations for these two cities (Cumberland and Hagerstown) from nonattainment of primary standards to attainment/unclassified.

EPA proposes to approve these changes submitted by Maryland. The purpose of this notice is to solicit public comments on this proposed action. All other Section 107 designations for the State of Maryland not discussed in this notice remain intact.

DATE: Comments on these proposed designations changes should be sumitted on or before January 23, 1981.

ADDRESSES: Copies of the associated support materials are avialable for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, 6th & Walnut Streets, Philadelphia, PA 19106.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Maryland Department of Health and Mental Hygiene, Environmental Health Administration, Air Quality Programs, 201 W. Preston Street, Baltimore, Maryland 21201, ATTN: Mr. George Ferreri.

All comments should be addressed to: Acting Chief (3AH10), Air Programs Branch, U.S. Environmental Protection Agency, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: 107MD–3.

FOR FURTHER INFORMATION CONTACT: Mr. Harold A. Frankford (3AH12), U.S. Environmental Protection Agency, Region III, Curtin Building, 6th & Walnut Streets, Philadelphia, PA 19106. Phone: 215/597–8392.

SUPPLEMENTARY INFORMATION:

Background

Section 107(d)(1) of the Clean Air Act ("Act") required States to submit to the Administrator a list identifying all air quality control areas, or portions thereof, that have not attained National Ambient Air Quality Standards (NAAQS). The Act further requires that the Administrator promulgate this list, with such modifications as he deems necessary, as required by Section 107(d)(2) of the Act. On March 3, 1978, the Administrator promulgated nonattainment designations for Maryland for total suspended particulates (TSP), sulfur dioxide, (SO_2), carbon monoxide (CO), ozone (O_3), and oxides of nitrogen (NO_x), 43 FR 8962. These designations were effective immediately and public comment was solicited. On September 12, 1978, in response to the comments received, the Administrator revised and amended certain of the original designations, 43 Fed. Reg. 40502. The Act also provides that a State, from time to time, may review and revise its designations list and submit these revisions to the Administrator for promulgation (Section 107(d)(5) of the Act). The criteria and policy guidelines governing these revisions and the Administrator's review of them are the same that were used in the original designations and which are summarized in the Federal Register on March 3, 1978, 43 FR 8962; September 11, 1978, 43 FR 40412; and September 12, 1978, 43 FR 40502. Maryland has revised its original designation list and on September 21, 1979 submitted these revisions to EPA.

Proposed CO Redesignations

The State of Maryland has revised CO designations for the cities of Cumberland and Hagerstown from nonattainment of primary CO NAAQS's to attainment/unclassified. Pursuant to this revision, the State submitted 8 quarters of air quality data showing no violations of the standard. Therefore, EPA proposed to redesignate these areas to "does meet primary standards" in accordance with Maryland's revision.

Submittal of Public Comments

The public is invited to comment on whether the cities of Cumberland and Hagerstown currently nonattainment areas for the Federal CO NAAQS's should be redesignated as attainment/unclassified areas for these CO NAAQS's.

All comments received on or before January 23, 1981 will be considered. However, until EPA actually promulgates a final redesignation changing the area from nonattainment to attainment/unclassified, the required State Implementation Plan (SIP) revisions satisfying Part D of the 1977 Clean Air Act Amendments will continue to apply.

All comments should be addressed to: Acting Chief (3AH10), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Street, 10th floor, Philadelphia, PA 19106, ATTN: 107MD–3.

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.

(Sec. 107(d), 171(2), 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a))

Dated: November 13, 1980.

Jack J. Schramm,

Regional Administrator.

[FR Doc. 80–40147 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–38–M

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40 CFR Part 123

[SW–4–FRL 1711–8]

Georgia's Application for Interim Authorization, Phase I

AGENCY: Environmental Protection Agency.

ACTION: Extension of time for comments on Georgia's Application for Interim Authorization.

SUMMARY: On December 15, 1980, a public hearing was held concerning Georgia's application for Interim Authorization, Phase I to administer a hazardous waste management program under the Resource Conservation and Recovery Act of 1976. On December 12, Georgia submitted to EPA some additional information clarifying some questions raised by EPA. Copies of the correspondence received from Georgia were handed out at the public hearing and read into the record of the hearing. Today EPA is announcing the availability for public review of this supplemental information, and giving notice of an extension of time for submittal of written comments to December 29, 1980.

DATE: Comments on Georgia's application for Interim Authorization must be received by December 29, 1980.

ADDRESSES: Copies of the supplemental information provided by the State of Georgia are available at the following addresses for inspection and copying by the public:

(1) Land Protection Branch, Georgia Environmental Protection Division, 270 Washington Street, S.W., Room 822, Atlanta, Georgia 30334, Telephone: 404/656–2833.

(2) Environmental Protection Agency, Regional Office Library, Room 121, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone: 404/881–4216.

(3) EPA Headquarters Library, Room 2404, 401 M Street, S.W., Washington, D.C. 20460.

Written comments should be addressed to: Heather M. Ford, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone: 404/881–3016.

FOR FURTHER INFORMATION CONTACT: Heather M. Ford (404) 881–3016.

Dated: December 16, 1980.

Rebecca W. Hanmer,

Regional Administrator.

[FR Doc. 80–40152 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–30–M

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40 CFR Part 180

[PP 4E1454/P164; PH–FRL 1713–6]

Diphenamid; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the herbicide diphenamid including its desmethyl metabolite. This proposal was submitted by the Interregional Research Project No. 4 (IR–4). This amendment will establish a maximum permissible level for residues of the subject herbicide on raspberries at 1.0 part per million (ppm).

DATE: Comments must be received on or before January 23, 1981.

ADDRESS: Written comments to: Clinton Fletcher, Registration Division (TS–767),

Emergency Response Section, Environmental Protection Agency, Rm. E–124, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Clinton Fletcher (202–426–0223).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 4E1454 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of Maryland.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide diphenamid (*N,N*-dimethyl-2,2-diphenylacetamide) including its desmethyl metabolite (*N*-methyl-2,2-diphenylacetamide) in or on the raw agricultural commodity raspberries at 1.0 ppm.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicology data considered in support of the proposed tolerance of 1.0 ppm in or on raspberries were a 2-year rat feeding study with a no-observed-effect-level (NOEL) of 200 ppm; a 2-year dog feeding study with NOEL of 120 ppm; a three-generation rat reproduction study indicating that reproduction performance was uninfluenced with a dietary intake of 30 mg/kg; and 90-day studies in dogs and rats demonstrating that the metabolite nordiphenamid displays toxic properties similar to diphenamid but to a lesser extent.

Data currently lacking and considered desirable include studies evaluating the oncogenic and teratogenic potential of diphenamid. Based on the long-term studies used to support the proposed tolerance, the acceptable daily intake (ADI) has been calculated to be 0.03 mg/kg/day, and employing a 100-fold safety factor. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.1085 mg/day. The current action will add 0.005 mg/day to the TMRC. The increased incremental risk resulting from the proposed use has been determined to be insignificant.

The metabolism of diphenamid is adequately understood and an adequate analytical method (gas chromatography) is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the agency, the insignificance of raspberries in the daily diet, and the fact that no animal feed item is involved, the tolerance established by amending 40 CFR Part 180 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request on or before January 23, 1981 this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number, "[PP 4E1454/P164]." All written comments filed in response to this petition will be available for public inspection in the office of Clinton Fletcher, from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180 be amended by alphabetically inserting the raw agricultural commodity "raspberries" in the table under § 180.230 to read as follows:

§ 180.230 Diphenamid; tolerance for residues.

* * * * *

Commodity and part per million
* * * * *
Raspberries, 1.0.
* * * * *

[FR Doc. 80–40130 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–32–M

40 CFR Part 180

[PH–FRL 1712–5; PP 9F2198/P163]

Fluchloralin; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This proposal requests the establishment of tolerances for residues of the herbicide fluchloralin [*N - (2-chloroethyl)-a,a,a-trifluoro-2,6-dinitro-N*-propyl - p - toluidine] in or on the raw agricultural commodities peanuts, peanut forage, and peanut hay at 0.05 part per million (ppm) and peanut hulls at 0.1 ppm. This proposal was submitted by BASF Wyandotte Corp. This proposal will establish the maximum permissible levels for residues of fluchloralin in or on peanuts, peanut forage, peanut hay, and peanut hulls.

DATE: Written comments should be received on or before January 23, 1981.

80P–1290

ADDRESS: Written comments to: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–359, 401 M St., SW., Washington, D.C. 20460, (202–755–2196).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of June 7, 1979 (44 FR 32737) that BASF Wyandotte Corp., 100 Cherry Hill Rd., PO Box 181, Parsippany, NJ 07054, had filed a pesticide petition (9F2198) with the EPA. This petition proposed the establishment of tolerances for residues of the herbicide fluchloralin [*N*-(2-chloroethyl) - a,a,a-trifluoro-2,6-dinitro-*N*-propyl - p - toluidine] in or on the raw agricultural commodities peanuts and peanut hay at 0.05 ppm and peanut hulls at 0.1 ppm.

The petitioner subsequently amended the petition by submitting a revised Section F petition, proposing an additional tolerance of 0.05 ppm of peanut forage. Because there is a potential increase in the risk to humans, this tolerance is being proposed at this time to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data evaluated included an acute oral LD_{50} study (rat) with an LD_{50} of 1,550 milligrams(mg)/kilograms(kg); a 90-day feeding study (rat) with a no-observable-effect-level (NOEL) greater than 500 mg/kg/day; a 90-day oral dosing study (dog) with a NOEL of 5.25 mg/kg/day; a 2-year feeding study (rat) with a NOEL of 4,400 ppm (no oncogenicity); a 3-generation

reproduction study (rat) with a NOEL of 10,144 ppm; a teratology study (rabbit)—negative at 3,000 mg/kg; a dominant lethal mutagenicity study (rat)—negative at 500 mg/kg; a cytogenicity study (rat)—negative at 10,144 ppm; and an 18-month feeding study (mice) with a NOEL of 4,400 ppm (no oncogenicity).

Data desirable but lacking are a subchronic oral toxicity study in a non-rodent species longer than 90 days in duration, a teratology study on a second species, and additional mutagenicity testing. Although a subchronic oral toxicity study in dogs has not been submitted, establishment of these tolerances is acceptable, since exposure from peanuts will increase the allowable daily intake (ADI) by only 0.17 percent. The petitioner has been informed of these data deficiencies and has agreed (in his letter of June 13, 1980) to perform the studies and to remove the use from the label should the results of these studies exceed the risk criteria for chronic toxicity as stated in § 162.11 of the regulations.

Tolerances of 0.05 ppm have previously been established for fluchloralin on cottonseed and soybeans for a theoretical maximal residue contribution (TMRC) of 0.0008 mg/day in a 1.5 kg diet compared with a maximal permissible intake (MPI) of 0.1575 for a 60-kg human or 0.51 percent of the ADI. The current action will add 0.0003 mg/day to the diet for a total TMRC of 0.0011 mg/day/1.5 kg or 0.68 percent of the ADI. The ADI is based on the NOEL in the 90-day oral dosing study in dogs and a safety factor of 2,000.

There are no regulatory actions pending against continued registration of fluchloralin. The product contains a nitrosamine at levels of under 1 ppm. Based on the recent agency policy that was published in the **Federal Register** of June 25, 1980 (45 FR 42854) this falls below the currently acceptable risk criteria. The metabolism of fluchloralin in plants and animals has been adequately delineated for the proposed use. An adequate analytical method (gas chromatography using an electron capture detector) is available for enforcement purposes. There is no reasonable expectation of residues occurring in eggs, milk, meat, and meat byproducts of poultry and livestock, therefore § 180.6(a)(3) applies. There are no other considerations in establishment of these tolerances and it is concluded that the tolerances will protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request, within 30 days after publication of this notice in the **Federal Register**, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number "PP 9F2198/P163." All written comments filed in response to this petition will be available for public inspection in the office of Robert J. Taylor from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Note.—Executive Order 12044 requires EPA to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e), 68 Stat. 514; (21 U.S.C. 346a(e)))

Dated: December 15, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180 be amended by alphabetically inserting the following raw agricultural commodities in the table under § 180.363 to read as follows:

§ 180.363 Fluchloralin; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Peanuts	0.05
Peanut forage	.05
Peanut hay	.05
Peanut hulls	.1
* * * * *	

[FR Doc. 80-40119 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[PP 9E2194/P156; PH-FRL 1713-1]

Methidathion; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes that a tolerance be established for residues of the incesticide methidathion (*0,0*-dimethylphosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2-methyloxy-Δ^2-1,3,4,-thiadiazolin-5-one) and its metabolites in or on the raw agricultural commodity mangos at 0.05 part per million (ppm). This proposal was submitted by the Interregional Research Project No. 4 (IR–4). This amendment will establish a maximum permissible level for residues of the subject insecticide in or on mangos at O).05 part per million (ppm).

DATE: Written comments must be received on or before January 23, 1981.

ADDRESS: Written comments to: Clinton Fletcher, Office of Pesticide Programs, Rm. E–124, Registration Division (TS–767), Environmental Protection Agency, 401 M ST., SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Clinton Fletcher (202–426–0223)

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted Pesticide Petition No. 9E2194 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of Florida. This petition proposes that a tolerance be established for the insecticide methidathion (*0,0*-dimethylphosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2-methyloxy-Δ^2-1,3,4,-thiadiazolin-5-one) and its metabolites in or on the raw agricultural commodity mangos at 0.05 part per million (ppm).

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicology data considered in support of 0.05 ppm in or on mangos were a 2-year dog feeding study and a 2-year rat feeding study both with no-observed-effect-levels (NOEL) or 4 ppm; a Rhesus monkey feeding study with a NOEL of 5 ppm, based on anticholinesterase effects; a multi-generation rat reproduction/terathology study with a NOEL of 32 ppm; a hen demyelination study negative at 50 milligrams (mg)/kilogram (kg) of body weight (bw) for 4 weeks; a mouse dominant lethal assay negative up to 45 mg/kg of bw. Data currently lacking but considered desirable include an acute delayed neurotoxicity study, a second oncogenicity study in the mouse, and a teratology study in a second species. The 24-month mouse oncogenicity study shows significant increase in hepatocellular neoplasms, as

well as other liver lesions of male mice treated with 100 ppm methidathion. However, the theoretical maximum residue contribution (TMRC) from the proposed use is only 2×10^{-5} mg/day/1.5 kh daily diet. This minute increase is considered negligible in comparison with the current estimated TMRC of 0.0219/mg/day/1.5 kg daily diet. In addition, the proposed use does not change the 20.13 percent acceptable daily intake (ADI) currently established by tolerance regulations.

The ADI had been calculated to be 0.01 mg/kg of bw/day based on the 4 ppm NOEL in the 2-year dog feeding study and employing a 10-fold safety factor with regard to chronic effects other than oncogenicity. Tolerances have been previously established for a variety of commodities and range from 0.05 ppm to 6 ppm. These tolerances utilize 20.31 percent of the ADI.

The metabolism of methidathion is adequately understood and an adequate analytical method (gas-liquid chromatography) is available for enforcement purposes. Since mangos are not animal feed items there is no reasonable expectation of residues in meat, milk, poultry, and eggs. There are presently no actions pending against the continued registration of this chemical. However, the agency will reevaluate all the existing tolerances for methidathion now that the final report and validation audit of the laboratory records on the carcinogenicity study are available.

Based on the above information considered by the Agency and the insignificance of mangos in the diet, it is concluded that the tolerance of 0.05 ppm in or on mangos would protect the public health. In light of the 24-month oncogenicity study, the Agency considers the cancer risk from dietary exposure of methidathion-treated mangos to be insignificant (negligible) since the ADI and TMRC are not affected by the proposed use.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request, on or before January 23, 1981, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number "PP 9E2194/P156". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of Clinton Fletcher from 8:00 a.m. to 4:00 p.m. Monday through Friday, except holidays.

Note.—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 that other regulations "specialized". This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e) 68 Stat. 514 (21 U.S.C. 346a(e))

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180, be amended by alphabetically inserting "mangos" in the table under § 180.298 to read as follows:

§ 180.298 Methidathion; tolerances for residues.

* * * * *

Commodity and part per million

* * * * *

Mangos, 0.05.

* * * * *

[FR Doc. 80-40131 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 180

[PP 0E2371/P165; PH-FRL 1713-4]

Terbacil; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the herbicide terbacil and its metabolites. This proposal was submitted by the Interregional Research Project No. 4 (IR-4). This amendment will establish a maximum permissible level for residues of the subject herbicide on asparagus at 0.2 part per million (ppm).

DATE: Comments must be received on or before January 23, 1981.

ADDRESS: Written comments to: Clinton Fletcher, Registration Division (TS-767), Emergency Response Section, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION, CONTACT: Clinton Fletcher (202-426-0223).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 0E2371 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Michigan and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act propose the establishment of a tolerance for residues of the herbicide terbacil (3-tert-butyl-5-chloro-6-methyluracil) and its metabolites 3-tert-butyl-5-chloro-6-hydroxymethyluracil (A), 6-chloro-2,3-dihydro-7-hydroxymethyl-3,3-dimethyl-5*H*-oxazolo-(3,2-a) pyrimidin-5-one (B) and 6-chloro-2,3-dihydro-3,3,7-trimethyl-5*H*-oxazolo (3,2-a) pyrimidin-5-one (C) of 0.2 ppm in or on asparagus.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicology data considered in support of the proposed tolerance of 0.2 ppm in or on asparagus were a rat acute oral toxicity study with an LD_{50} greater than 7.5 grams (gm)/kilogram (kg); a 2-year rat feeding study with no-observable-effect-level (NOEL) of 250 ppm; a 2-year dog feeding study with a NOEL of 50 ppm; a three-generation rat reproduction study with a NOEL of 250 ppm (highest level tested); and a bacterial phage mutagenicity assay. Data currently lacking and considered desirable include an oncogenicity study in a second species; teratology studies in two test species; and additional mutagenicity testing in accordance with the proposed guidelines.

The acceptable daily intake (ADI), based on the 2-year dog feeding study (NOEL of 1.25 milligrams (mg)/kg/day) and using a 100-fold safety factor, is calculated to be 0.0125 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60 kg human is calculated to be 0.75 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.0774 mg/day. The current action will utilize 0.03 percent of the ADI. Published tolerances utilize 10.32 percent of the ADI. Thus, the increment in theoretical exposure is minimal. The risk, if any, is judged to be acceptable, even though a second oncogenicity study is not available. Also, the reproduction study provides adequate assurance that terbacil has a low potential for adverse effects, although a teratology study, per se, has not been performed.

The metabolism of terbacil is adequately understood and an adequate

analytical method (gas chromatography) is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the agency, the tolerance established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number "[PP 0E2371/P165]." All written comments filed in response to this petition will be available for public inspection in the office of Clinton Fletcher from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12444.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180 be amended by alphabetically inserting the raw agricultural commodity "asparagus" in the table under § 180.209(b) to read as follows:

§ 180.209

Terbacil; tolerance for residues.

* * * * *

(b)* * *

Commodity	Parts per million
Asparagus	0.2

* * * * *

[FR Doc. 80-40134 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

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40 CFR Part 180

[PH-FRL 1713-3; OPP-260038]

2,4-D Isopropyl Ester; Proposed Tolerance Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes that 40 CFR 180.142(a) be revised to allow the postharvest use of the 2,4-*D* isopropyl ester in or on the raw agricultural commodity citrus fruits under the established 5 parts per million (ppm) tolerance for citrus fruits. This proposal was submitted by the Interregional Research Project No. 4 (IR-4) on behalf of the Agricultural Experiment Station of California.

DATE: Comments must be received on or before January 23, 1981.

ADDRESS: Written comments to: Clinton Fletcher, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Clinton Fletcher (202-426-0223).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted Pesticide Petition No. 6E1797 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, amend 40 CFR 180.142(a) to allow the post harvest use of the 2,4-D isopropyl ester in or on citrus fruits under the established 5 ppm tolerance for citrus. At present, § 180.142(a) permits the preharvest use of the 2,4-D isopropyl ester and the 2,4-D butoxyethyl ester to the crop group citrus and the postharvest use of the 2,4-D alkylanolamine salts to citrus fruits. The established 5 ppm tolerance covers residues of 2,4-D arising from the combined pre and postharvest usage of these compounds.

The Administrator has concluded that the requested change can be toxicologically supported since the existing 5.0 ppm tolerance for 2,4-D on citrus will not be exceeded by the addition of the postharvest use of the isopropyl ester of 2,4-D. The currently established tolerances for 2,4-D residues in citrus will be adequate to cover residues from both the pre- and postharvest uses of the 2,4-D isopropyl ester postharvest use.

The toxicity of the different salts, esters and amines of 2,4-D is very similar and thus, from a toxicological point of view, it is unimportant which form of 2,4-D is used.

The allowance of the post harvest use of 2,4-D will not increase the exposure of humans to 2,4-D residues and hence no additional hazard to humans will result from the proposed change.

There are no other applicable considerations, and it has been determined that the proposed change to 40 CFR 180.142 will protect the public health. Therefore, the Administrator proposes that 40 CFR 180.142 should be amended to allow the postharvest use of the 2,4-D isopropyl ester in or on citrus fruits under the established 5 ppm tolerance for citrus.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request by January 23, 1981 that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating the document control number "OPP 260038." All written comments filed in response to this proposed regulation will be available for public inspection in the office of Clinton Fletcher from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e))

Dated:

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180 be amended by revising paragraph (a) under § 180.142 to read as follows:

§ 180.142 2,4-D; tolerances for residues.

(a) Tolerances are established for residues of the herbicide, plant growth regulator, and fungicide 2,4-*D* (2,4-dichlorophenoxyacetic acid) in or on the raw agricultural commodities as follows:

5 parts per million in or on apples, citrus fruits, pears, and quinces. The tolerance on citrus fruits also includes residues of 2,4-*D* (2,4-dichlorophenoxyacetic acid) from the preharvest application of 2,4-*D* isopropyl ester and 2,4-*D* butoxyethyl ester and from the postharvest application and 2,4-*D* alkanolamine salts and 2, 4-*D* isopropyl ester to citrus fruits.

* * * * *

[FR Doc. 80-40133 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 14

Interim Rule Implementing the Regulatory Flexibility Act; Request for Comments

AGENCY: Department of the Interior.

ACTION: Request for comment on interim rule.

SUMMARY: The Department of the Interior is revising its rulemaking procedures to implement the Regulatory Flexibility Act (Pub. L. 96-354) by publishing an interim rule. The rule is published in today's **Federal Register** with a request for public comment.

DATE: Comments must be received on or before February 9, 1981.

ADDRESS: Written comments should be sent to: Chief, Division of Directives and Paperwork Management, Office of Information Resources Management, Room 7357, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jim Douglas, Office of Policy Analysis, 202-343-8501 or Deborah Ryan, Office of the Solicitor, 202-343-5216.

SUPPLEMENTARY INFORMATION: The provisions of the Regulatory Flexibility Act require Federal agencies to take into consideration and analyze the effects of their rules on small businesses, small organizations, and small governmental jurisdictions. To implement the Act, the Department of the Interior is revising its rulemaking procedures implementing Executive Order 12044, "Improving Government Regulations" (March 23, 1978), to incorporate the requirements of the Act.

Although the Department is publishing the revised procedures as an interim rule, members of the public have 45 days to submit comments on the rule. After consideration of public comments and an evaluation of the efficiency of the interim rule, a final rule will be published.

For information regarding the Department's current rulemaking procedures, a discussion of the Regulatory Flexibility Act, and a section-by-section review of the revised procedures, see the preamble to the interim rule.

Larry E. Meierotto,

Assistant Secretary—Policy, Budget and Administration.

December 18, 1980.

[FR Doc. 80-40085 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5817]

Revision of Proposed Flood Elevation Determinations for Town of Gulf Shores, Alabama, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Gulf Shores.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 31428 on May 13, 1980 and in *The Independent,* published on or about April 9, 1980, and April 16, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, P.O. Box 299, Gulf Shores, Alabama.

Send comments to: Honorable Tom Norton, Mayor, Town of Gulf Shores, Town Hall, P.O. Box 299, Gulf Shores, Alabama 36542.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872, in Alaska or Hawaii, call Toll Free Line (800-424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Gulf Shores, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground, *elevation in feet (NGVD)
Gulf of Mexico	Approximately 1,000 feet east of the intersection of West Gulf Shores Boulevard and the western most corporate limits.	*14
	Intersection of East 1st Avenue and East Third Street.	*13
	Intersection of West 1st Street and East Gulf Shores Boulevard.	*14
Mobile Bay	Approximately 2,000 feet west of the intersection of Rose Lane and Wedgewood Drive.	*11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective Janaury 28, 1969 (33 FR 17804, November 28, 1968, as amended; (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 8, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39608 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5817]

Revision of Proposed Flood Elevation Determinations for City of Bayou La Batre, Alabama, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Bayou La Batre.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 31427 on May 13, 1980 and in the *Mobile County News,* published on or about April 10, 1980, and April 17, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at City Hall, 33 South Wintzell Avenue, Bayou La Batre, Alabama.

Send comments to: Honorable M. G. Temme, Mayor, City of Bayou La Batre, 33 South Wintzell Avenue, Bayou La Batre, Alabama 36509.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872; in Alaska or Hawaii, call Toll Free Line (800-424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Bayou La Batre, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground, *elevation in feet (NGVD)
Mississippi Sound...	Intersection of Little River Street and western corporate limits.	*13
	Southwestern end of Powell Avenue.	*14

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 8, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39609 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5958]

National Flood Insurance Program; Proposed Base Flood Elevations for the City of Huntsville, Alabama

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations described below.

The proposed base flood elevations will be the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevations are available for review at the Mayor's Office, City Hall, Huntsville, Alabama.

Send comments to: The Honorable Joe W. Davis, Mayor, City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6570 or toll free line, (800) 424-8872 or (800) 424-8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations (100-year flood) for the City of Huntsville, Alabama in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The proposed base flood elevations together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

The proposed 100-year base flood elevations for selected locations are:

Source of flooding	Location	Elevation (feet) (NGVD)
Huntsville Spring Branch.....	Martin Road.....	575
Huntsville Spring Branch.....	Johnson Road.....	585
Huntsville Spring Branch.....	Drake Avenue.....	597
Huntsville Spring Branch.....	Confluence with Broglan Branch.	605
Huntsville Spring Branch.....	Confluence with Pinhook and Fagan Creeks.	610

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR

17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: November 4, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–39610 Filed 12–23–80; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 67

[Docket No. FEMA–5817]

Revision of Proposed Flood Elevation Determinations for City of Mobile, Alabama, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Mobile.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 31429 on May 13, 1980 and in the *Mobile Press Register,* published on or about April 8, 1980, and April 15, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at City Hall, P.O. Box 1827, Mobile, Alabama.

Send comments to: Honorable Robert Doyle, Mayor, City of Mobile, City Hall, P.O. Box 1827, Mobile, Alabama 36633.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, in Alaska or Hawaii, call Toll Free Line (800) 424–9080) Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year flood elevations are listed below for selected locations in the City of Mobile, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	# Depth in feet above ground, *elevation in feet (NGVD)
Mobile Bay	Approximately 1700 feet south of the southeastern tip of Blakely Island.	*14
	Approximately 4400 feet east from the intersection of Marvin Street and Parham Street.	*16

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128) Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 8, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–39611 Filed 12–23–80; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 67

[Docket No. FEMA–5817]

Revision of Proposed Flood Elevation Determinations for Mobile County, Unincorporated Areas, Alabama, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Mobile County.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 31430 on May 13, 1980 and in *The Mobile Press Register,* published on or about April 8, 1980, and April 15, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at Mobile County Courthouse, Mobile, Alabama.

Send comments to: Honorable Bay Haas, President, Mobile County Commision, Post Ofice Box 1443, Mobile, Alabama 36601.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872. In Alaska or Hawaii, call Toll Free Line (800–424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in Mobile County, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	# Depth in feet above ground, *elevation in feet (NGVD)
Mobile Bay	Approximately 2500 feet east of the intersection of Riverview Drive and Dauphin Island Parkway.	*16
	Approximately 200 feet downstream of the Dauphin Island Parkway bridge over South Fork Deer River.	*12
Mississippi Sound	Approximately 3200 feet North of Point Caddy.	*15
Mississippi Sound	Approximately 2300 feet south of the intersection of State Route 188 and Zirloff Road.	*17
Gulf of Mexico	At Oro Point	*15

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 8, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39612 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5960]

National Flood Insurance Program; Proposed Corporate Limits, Floodways, Cross-Sections, Zone Boundaries and Base Flood Elevations for the City of Wallins Creek, Kentucky

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations described below.

The proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations will be the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations are available for review at the Mayor's Office, City Hall, Wallins Creek, Kentucky.

Send comments to: The Honorable Margaret Preston, Mayor, City Hall, P.O. Box 71, Wallins Creek, Kentucky 40873.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street S.W., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations (100-year flood) for the City of Wallins Creek, Kentucky, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zones for selected locations are:

Source of flooding	Location	Elevation (feet)	Zone
Terry Fork	Approximately 150 feet upstream from Gravel Road	1,142	Zone A2.
Cumberland River	Hill Street	1,133	Zone A12.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: November 4, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39607 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5961]

National Flood Insurance Program; Proposed Base Flood Elevation Determinations for Hall County, Nebraska

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations as described below.

The proposed base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Information regarding the proposed base flood elevations is available for review at the Office of the Highway Superintendent, Hall County Highway Department, 2900 West Second Street, Grand Island, Nebraska. Sent comments to: Mr. Bernard J. Crick, Chairman, Hall County Board of Supervisors, Hall County Administration Building, Grand Island, Nebraska 68801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Steet, SW., Washington, D.C.

20410, (202) 755–6570 or toll free line (800) 424–8872, (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations for Hall County, Nebraska, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed change in base (100-year) flood elevations on Panels 125 and 150 of 150 of the Hall County Flood Insurance Rate Map are as follows:

Source of Flooding	Location	Elevation, National Geodetic Vertical Datum
Middle Channel Platte River.	Approximately 3,000 feet upstream of County Road.	1,925
Middle Channel Platte River.	Approximately 3,600 feet upstream of County Road.	1,926
South Channel Platte River.	Approximately 1,700 feet upstream of County Road.	1,929

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: November 4, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39613 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5966]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations.

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Auburn, Lee County	Sougahatchee Creek	Just upstream of Branch 1 of Sougahatchee Creek	*574
		Branch 1 of Sougahatchee Creek.	Just downstream of earthen dam	*582
		Branch 2 of Sougahatchee Creek.	Approximately 1,400 feet upstream of Highway 147	*607
		Parkerson Mill Creek	Just upstream of Route 267	*576
			Just downstream of Samford Drive	*606
		Town Creek	Just upstream of Chewacla State Park Road	*468
			Just upstream of Interstate 85	*567
			Just downstream of Wrights Mill Road	*591
			Just downstream of Moore's Mill Road	*613
		Moore's Mill	Just upstream of Ogletree Road	*503
			Just downstream of Winway Drive	*537
	Maps available for inspection at City Hall, 171 North Ross Street, Auburn, Alabama 36830.			
	Send comments to Mayor Jan Dempsey or Mr. Tyron E. Tisdale, City Manager, City Hall, 171 North Ross Street, Auburn, Alabama 36830.			
Alabama	Creola (Town), Mobile County	Mobile Bay (Gunnison Creek)	At intersection of Guthrie Lane and Theophilus Road	*11
	Maps available for inspection at Town Hall, Dead Lake Road, Creola, Alabama.			
	Send comments to Honorable Kenneth Moss, P.O. Box 497, Creola, Alabama 36525.			

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	Unincorporated Areas of Lee County.	Sougahatchee Creek	Just downstream of North Donahue Drive	*580
			Just upstream of North College Street	588
			Just downstream of Southern Railway	627
		Branch 2 of Sougahatchee Creek.	Just downstream of the upstream corporate limits	*610
		Pepperell Creek	Just upstream of Highway 280 Alternate	*647
		Rocky Creek	Just upstream of confluence of Pepperell Creek	*625
		Parkerson Mill Creek	Just upstream of County Road 26	*398
			Just downstream of U.S. Highway 29	*470
		Branch of Parkerson Mill Creek	Just downstream of Highway 29	*430
		Mill Creek	Just downstream of County Road 12	*335
			Just downstream of County Road	*378
		Holland Creek	Just downstream of Pierce Road	*389
			Just downstream of U.S. Highway 280	*413
		Chattahoochee River	Just downstream of Oliver Dam	*289
			Just downstream of Goat Rock Dam	*348
			Just downstream of Bartlett's Ferry Dam	*416
	Maps available for inspection at Lee County Engineering Office, Lee County Courthouse, Opelika, Alabama 36801.			
	Send comments to Mr. Hal Smith, Lee County Chairman, Lee County Courthouse, Opelika, Alabama 36801.			
Alabama	City of Opelika, Lee County	Sougahatchee Creek	Just downstream of Sougahatchee Lake Dam	*646
		Pepperell Creek	Just upstream of Highway 280	*670
			Just downstream of Cunningham Drive	*698
		Rocky Creek	Just downstream of Southern Railway	*643
			Just downstream of White Road	*649
			Just upstream of India Road	*705
	Maps available for inspection at City Hall, 204 South 7th Street, Opelika, Alabama 36801.			
	Send comments to Mayor D. B. Jones or Mr. J. Newell Floyd, City Clerk, City Hall, 204 South 7th Street, Opelika, Alabama 36801.			
Alabama	City of Phenix City, Rusell County.	Mill Creek	Approximately 250 feet upstream of U.S. Highway 80	*239
			Just upstream of 25th Street	*265
			Just upstream of Lakewood Drive	*282
			Just downstream of U.S. Highway 200	*303
		Holland Creek	Approximately 200 feet upstream of Lakewood Drive	*311
			Just upstream of Phenix City Dam	*365
		Cochgalechee Creek	Approximately 150 feet downstream of Seale Road	*256
			Just downstream of Knowles Road	*249
		Chattachoochee River	Just downstream of U.S. Highway 280	*230
			Just upstream of City Mills Dam	*248
	Maps available for inspection at City Hall, 1111 Broad Street, Phenix City, Alabama 36867.			
	Send comments to Mayor Jane Gullatt, or Mr. John Franklin, City Manager, City Hall, 1111 Broad Street, Phenix City, Alabama 36867.			
Alabama	Unincorporated Areas of Russell County.	Uchee Creek	Just downstream of Highway 165	*228
			Just downstream of Southern Railway	*243
			Just upstream of County Road 39	*245
			Just downstream of U.S. Highway 431	*257
			Just downstream of State Highway 169	*292
		Little Uchee Creek	Just downstream of U.S. Highway 431	*262
			Just downstream of Sandfort Road	*277
			Just downstream of U.S. Highway 80	*299
		Chattahoochee River	Just upstream of Dixie Road	*219
			Just downstream of U.S. Highway 280	*230
		Mill Creek	Approximately 160 feet downstream of Pointer Road	*319
		Holland Creek	Just upstream of the Phenix City corporate limits	*382
		Hurtsboro Creek	Approximately 2,400 feet downstream of County Road 49 (Southern Hurtsboro corporate limits).	*326
		Cochgalechee Creek	Just downstream of Brickyard Road	*233
	Maps available for inspection at Russell County Courthouse, Corner of 14th Street, Phenix City, Alabama 36867.			
	Send comments to Mr. John W. Belk, Jr., Chairman or Mr. Claude Parkman, Commissioner, Russell County Courthouse, Phenix City, Alabama 36867.			
Arizona	Clarkdale (Town), Yavapai County	Verde River	At the center of the Tuzigoot National Monument Road crossing of Verde River.	*3,350
		Deception Wash	20 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing.	*3,375
			At the center of the State Highway 279 crossing of Deception Wash	*3,655
			At intersection of western corporate limits and center of Deception, Wash.	*3,888
		Bitter Creek	40 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing (downstream crossing).	*3,393
			110 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing (upstream crossing).	*3,523
		Bitter Creek-South Fork	30 feet upstream from center of State Highway 279 crossing	*3,691
	Maps available for inspection at Town Hall, Ninth Street, Clarkdale, Arizona.			
	Send comments to Honorable Dorothy Benatz, P.O. Box 308, Clarkdale, Arizona 86324.			

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Cottonwood (Town), Yavapai County.	Verde River	Intersection of Dead Horse crossing and center of Verde River	*3,297
		Del Monte Wash	Intersection of East Pima Street and center of Del Monte Wash	*3,294
			60 feet upstream from center of U.S. Highway 89 alternate State Highway 279.	*3,464
			Intersection of East Pima Street and North First Street	#2
		Silver Spring Gulch	50 feet upstream from center of South Main Street	*3,340
			100 feet north of intersection of South Third Street and Date Street	*3,500
		Oak Wash	Intersection of State Highway 279 and center of Oak Wash	*3,315
	Maps available for inspection at Town Hall, 827 N. Main, Cottonwood, Arizona.			
	Send comments to Honorable Donald Hahn, 827 N. Main, Cottonwood, Arizona 86326.			
Arizona	Winslow (City), Navajo County	Little Colorado River	At intersection of Maple Street and Bales Avenue	*4,848
			Intersection of Little Colorado River and State Highway 66	*4,857
	Maps available for inspection at City Hall, 21 Williamson Street, Clarkdale, Arizona.			
	Send comments to Honorable Dick Bates, P.O. Drawer L., Winslow, Arizona 86047.			
California	El Paso de Robles (City), San Luis Obispo County.	Mountain Springs Creek	100 feet upstream from cener of Vine Street	*763
			Intersection of 22nd and Oak Streets	
			Intersection of 21st and Pine Streets	#1
			Intersection of 21st and Pine Streets	#1
			Intersection of Gregory and San Luis Avenue	*697
			500 feet east of the intersection of 20th Street and Riverside Avenue	*698
			Intersection of 24th Street and U.S. Highway 101	#3
		Peachy Canyon Creek	100 feet upstream from center of Vine Street	*780
			300 feet east of the intersection of Park and 2nd Streets	*707
			600 feet east of the intersection of Park and 3rd Streets	*705
		Salinas River	200 feet upstream from center of 13th Street	*692
		South Branch Unnamed Creek No. 1.	100 feet upstream from confluence with Unnamed Creek No. 1	*770
		Unnamed Creek No. 1	100 feet upstream from center of Creston Road	*798
		Fern Canyon Creek	At intersection of U.S. Highway 101 and 13th Street	*690
	Maps available for inspection at City Hall, 1030 Spring Street, El Paso de Robles, California.			
	Send comments to Honorable Barney Schwartz, P.O. Box 307, El Paso de Robles, California 93446.			
Colorado	Gypsum (Town), Eagle County	Gypsum Creek	At confluence with Eagle River	*6,274
			Coley Mesa Road over the channel	*6,366
		Eagle River	Westernmost corporate limits where stream leaves the community	*6,239
			100 feet downstream (west) of U.S. Highways 6 and 24 over the channel.	*6,274
	Maps available for inspection at Town Hall, 280-Five, Gypsum, Colorado.			
	Send comments to Honorable Jim Cummins, 280-Five, Eagle, Colorado 81637.			
Connecticut	Bozrah (Town), New London County.	Yantic River	Downstream Corporate Limits	*119
			3,080' downstream of State Route 608	*128
			160' downstream of State Route 608	*143
			Upstream of dam just upstream of State Route 608	*155
			80' upstream of Haughton Road	*160
			110' upstream of Upstream crossing of State Route 608	*165
		Gardner Brook	Confluence with Yantic River	*156
			80' upstream of Gager River	*164
			600' downstream of Bear Hill Road	*175
			80' upstream of Bear Hill Road	*185
			Upstream of Dam at Bozrah Street (State Route 163)	*197
			80' downstream of Access Road, 2,300' upstream of Bozrah Street (State Route 163).	*207
			80' upstream of Access Road, 2,490' upstream of Bozrah Street (State Route 163).	*212
	Maps available for inspection at the First Selectman's Office, Bozrah Town Hall, RFG #1, Fitchville, Connecticut.			
	Send comments to the Honorable Raymond C. Barber, First Selectman of the Town of Bozrah, RFD #1, Fitchville, Connecticut 06334.			
Delaware	Camden (Town), Kent County	Isaac Branch	Downstream Corporate Limits	*15
			Upstream Corporate Limits	*21
	Maps available at the Town Hall, Camden, Delaware.			
	Send comments to Honorable James Kelly, Mayor of Camden, Town Hall, Camden, Delaware 19934.			
Florida	City of Haines City, Polk County	Engineers Lake	Entire shoreline	*127
		Lake Alice	Entire shoreline	*130
		Lake Boomerang	Entire shoreline	*123
		Lake Brown	Entire shoreline	*129
		Lake Butler	Entire shoreline	*124
		Lake Elsie	Entire shoreline	*129
		Lake Eva	Entire shoreline	*125
		Lake Hammock	Entire shoreline	*134
		Lake Hester	Entire shoreline	*134
		Lake Joe	Entire shoreline	*126
		Lake Tracy	Entire shoreline	*126
		Little Lake Hamilton	Entire shoreline	*123

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Haines City Drainage Canal	At Lindwall Avenue extended (by the west of Peninsular Drive)	*124
			Just upstream of U.S. Highways 92 and 27	*124
			Just upstream of Commerce Avenue	*126
		Lake Brown Outlet Ditch	Just downstream of Kentucky Street	*129
	Maps available for inspection at City Hall, 600 East Henson Avenue, Haines City, Florida 33844.			
	Send comments to Mayor Tommy Sheek or Ms. India Walker, City Clerk, City Hall, 600 East Henson Avenue, Haines City, Florida 33844.			
Florida	City of Lakeland, Polk County	Lake Bonnet Drain	Just upstream of Chestnut Road (Bridge)	*140
		Lake Hunter Drain	Just downstream of Ariana Street	*160
		Southwest Ditch Tributary	Just downstream from the confluence with Southwest Ditch	*160
		Southwest Ditch	Just downstream of Harden Boulevard	*156
		Lake Parker Tributary	Just downstream of State Road 33	*137
			Just downstream of U.S. Highway 98	*137
		Lake Hollingsworth Drain	Just downstream of New Jersey Road	*124
		Lake Bentley Drain	Just downstream of Atlanta Avenue	*115
			Just downstream of Venice Way	*116
		Lake John Drain	Just downstream of State Road 37B	*109
		Lake Bonnet	Entire shoreline	*147
		Lake Hunter	Entire shoreline	*163
		Lake Parker Tributary Swamp	Entire shoreline	*140
		Lake Bonny	Entire shoreline	*132
		Lake Parker	Entire shoreline	*132
		Lake Hollingsworth	Entire shoreline	*135
		Lake Bentley	Entire shoreline	*120
		Lake John	Entire shoreline	*113
		Lake Canyon	Entire shoreline	*113
		Southeast Lakes	Entire shoreline	*113
	Maps available for inspection at City Hall, Building Inspection Department, 228 Massachusetts Avenue, Lakeland, Florida 33802.			
	Send comments to Mayor Carrie Oldham or Mr. Larry Turnipseed, Mayor Protem, City Hall, 228 Massachusetts Avenue, Lakeland, Florida 33802.			
Florida	Putnam County (Unincorporated Areas).	St. Johns River	At center of U.S. Highway 17 crossing of St. Johns River	*6
		Dunns Creek	100 feet upstream from center of U.S. Highway 17 crossing	*7
		Acosta Creek	100 feet downstream from center of State Highway 309 crossing	*8
		Crescent Lake	250 feet northeast from the intersection of U.S. Highway 17 and Union Avenue.	*7
		Lake Stella	At shoreline in the vicinity of the City of Crescent City	*41
		Lake Broward	At shoreline in the vicinity of the Town of Pomona Part	*42
	Maps available for inspection at Putnam County Courthouse, St. Johns Avenue and Reid Street, Palatka, Florida.			
	Send comments to Honorable Jerry B. Kelley, Post Office Box 758, Palatka, Florida 32077.			
Florida	City of Winter Haven, Polk County	Winter Haven Chain of Lakes, Including: Lake Jessie, Lake Idylwild, Lake Hartridge, Lake Cannon, Lake Mirror, Spring Lake, Lake Howard, Lake May, Lake Shipp, Lake Lulu.	Entire shoreline	*133
		Lake Deer	Entire shoreline	*142
		Lake Pansy	Entire shoreline	*131
		Lake Alfred Chain of Lakes Including: Lake Conine, Lake Smart.	Entire shoreline	*131
		Lake Fannie	Entire shoreline	*128
		Lake Henry	Entire shoreline	*128
		Lake Hamilton	Entire shoreline	*123
		Lake Citrus	Entire shoreline	*146
		Lake Ida	Entire shoreline	*135
		Lake Lucerne	Entire shoreline	*134
		Lake Silver	Entire shoreline	*147
		Lake Martha	Entire shoreline	*144
		Lake Maude	Entire shoreline	*143
		Lake Idyl	Entire shoreline	*134
		Lake Buckeye	Entire shoreline	*132
		Lake Gem	Entire shoreline	*143
		Muck Pond	Entire shoreline	*137
		Lake Elbert	Entire shoreline	*137
		Lake Otis	Entire shoreline	*130
		Lake Link	Entire shoreline	*130
		Lake Mariam	Entire shoreline	*126
	Maps available for inspection at City Hall, 451 3rd Street, N.W., Winter Haven, Florida 33880.			
	Send comments to Mayor Bruce Parker or Ms. Beverly Pearson, City Clerk, City Hall, 451 3rd Street, N.W., Winter Haven, Florida 33880.			
Georgia	Unincorporated Areas of Fulton County.	Autry Creek	Approximately 100 feet downstream of Old Alabama Road	*900
		Ball Mill Creek	Just downstream of Spalding Drive	*883
			Just upstream of Dunwoody Club Drive	*948
		Bear Creek	Just downstream of Cochran Mill Road	*785
			Just upstream of Ono Road	*898
		Bethel Branch	Just upstream of Burdett Road	*898
		Big Creek	Just upstream of Haynes Bridge Road	*970
			Just downstream of Georgia Highway 400	*962
			At Kimball Bridge Road	*977

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Boat Rock Creek	Approximately 100 feet upstream of Highway 70	*762
			Just upstream of Reynolds Road	*786
		Broadnax Creek	Just upstream of Lester Road	*876
			Just upstream of Oakley Industrial Boulevard	*889
		Caldwell Creek	Just upstream of Village Drive	*821
			Just upstream of Highway 154 (Cascade Road)	*815
		Camp Creek	At Cascade Palmetto Highway	*750
			Just downstream of Stonewall Tell Road	*765
			Just downstream of Enon Road	*774
		Cater Creek	Just upstream of Pleasant Hill Road	*915
			Just downstream of Surrey Trail Road	*944
		Cedar Creek	Just downstream of Upper Wooten Road	*790
		Chattahochee River	Just upstream of Hutcheson Ferry Road	*718
			Just upstream of Capps Ferry Road	*729
			Just upstream of State Highway 92	*747
			Approximately 200 feet upstream of Holcomb Bridge Road	*885
			Just downstream of Abbotts Bridge Road (State Highway 120)	*902
		Colewood Creek	Just upstream of Riverside Drive	*834
			Just upstream of River Valley Road	*910
		Deep Creek	Just upstream of Butner Road	*753
			Just upstream of Jones Road	*777
		Demooney Creek	Just upstream of Demooney Road	*776
			Just downstream of Cherie Drive	*814
		Enon Creek	Just upstream of Enon Road	*769
			Just downstream of Butner Road	*794
		John's Creek	Just upstream of Buice Road	*904
			Approximately 100 feet downstream of Parson's Road	*960
			Just downstream of Abbotts Bridge Road	*989
		Kimberly Branch	Just upstream of Creel Road	*876
			Just downstream of Hallie Mill Drive	*917
		Kimberly Creek	Just upstream of Flat Shoals Road	*871
			Just downstream of Old Bill Cook Road	*887
		Kings Lake Creek	Just downstream of State Highway 154 (Cascade Road)	*774
			Just downstream of Wright's Lake Dam	*807
			Approximately 175 feet downstream of Loch Lomond Trail	*825
		Line Creek	Just downstream of Jones Road	*792
			Just downstream of McClure Road	*804
		Little Bear Creek	Just upstream of Wilkerson Mill Road	*886
			Just downstream of Phillips Road	*897
		Long Indian Creek	Just upstream of Waters Road	*996
			Just upstream of Buice Road	*1,049
		Long Island Creek	At Northside Drive	*795
			Just downstream of Long Island Drive	*857
			Just downstream of Powers Ferry Road	*821
		Marsh Creek	Just upstream of Riverside Drive	*817
			Just downstream of Glenridge Drive	*919
		Morning Branch	Just upstream of Interstate 85	*884
			Just upstream of Pebble Beach Road	*900
		Morning Creek	Just upstream of Bethsaida Road	*849
			Just downstream of Buffington Road	*878
		Mountain Park Creek	Just upstream of First Private Driveway	*957
			Approximately 100 feet upstream of Oakhaven Drive	*962
		Nancy Creek	Just downstream of Peachtree Dunwoody Road	*847
			At Evergreen Drive	*856
		Red Mill Creek	Just downstream of Red Mill Road	*853
		Riverside Creek	Just upstream of Riverside Drive	*754
		Rocky Creek	Approximately 150 feet downstream of Kings Road	*1,008
			Just downstream of Oakhaven Drive which is upstream Dam	*957
		Shannon Creek	Just upstream of Interstate 85	*883
			Just upstream of Flat Shoals Road	*895
		South Fork Marsh Creek	Just upstream of Glenridge Drive	*945
			Just upsteam of ???	*1,000
			Just upstream of Private Drive	*1,000
		North Utoy Creek	Just downstream of Sewell Avenue	*812
			Just downstream of Fairburn Road	*805
		South Utoy Creek	Just upstream of Interstate 85	*816
			Just downstream of Highway 154	*809
		Utoy Creek	Approximately 100 feet upstream of Great Southwest Parkway	*762
			Just upstream of Highway 70 West Bridge	*765
			Approximately 100 feet upstream of Railroad Bridge	*773
		Trickum Creek	Just downstream of Landrum Road	*929
		Valley Brook Creek	Just upstream of Ben Hill Road	*823
			Just downstream of Will Lee Road	*853
		Whitewater Creek	Approximately 300 feet upstream of Spence Road	*889
			Just upstream of Interstate-85	*915
		Windham Creek	Just Upstream of Bethsaida Road	*854
			Just downstream of Oakley Road	*896
		Wolf Creek	Just upstream of Aldredge Road	*794
			Just upstream of Old Fairburn Road	*832

Maps available for inspection at Fulton County Administration Building, 165 Central Avenue, Atlanta, Georgia 30303.

Send comments to Mr. Milton Farris, Chairman or Mr. Reginald Eaves, Vice-Chairman, Fulton County Board of Commissioners, 165 Central Avenue, Atlanta, Georgia 30303.

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
Georgia	City of Midway, Liberty County	Cay Creek	Just downstream of U.S. Highway 82 (State Road 38)	*8
			Just upstream of U.S. Highway 82 (State Road 38)	*8
			Just upstream of U.S. Highway 17 (State Road 25)	*8
	Maps available for inspection at City Hall, Midway, Georgia 31320.			
	Send comments to Mayor Wendell Williams or Mr. B. F. Freeman, Mayor-Pro-Tem, City Hall, P.O. Box 125, Midway, Georgia 31320.			
Georgia	Town of Pooler, Chatham County.	Pipemakers Canal	Just downstream of Cemetery Road	*17
	Maps available for inspection at City Hall, 103 South Rogers Street, Pooler, Georgia 31322.			
	Send comments to Mayor Travis Nichols, or Mr. Robert Morgan, Mayor Pro-Tem, City Hall, P.O. Box 767, Pooler, Georgia 31322.			
Illinois	(V) Rockton, Winnebago County	Rock River	Just upstream State Route 2	*725
			About 1800 feet upstream Rockton Dam	*730
	Maps available for inspection at the Village Hall, 215 West Main Street, Rockton, Illinois.			
	Send comments to Honorable Lawrence Richardson, Village President, Village of Rockton, Village Hall, 215 West Main Street, Rockton, Illinois 61072.			
Indiana	(T) Prince's Lake, Johnson County.	East Lake	Shoreline	*777
		North Lake	Shoreline	*810
		White Lake	Shoreline	*866
		Hants Lake	Shoreline	*783
	Maps available for inspection at the Town Hall, Lake View Drive, Prince's Lakes, Indiana.			
	Send comments to Honorable Ed Burgett, President of the Town Board, Town of Prince's Lakes, Town Hall, Lake View Drive, Prince's Lakes, Indiana 46164.			
Indiana	(T) Whiteland, Johnson County	Brewer Ditch	Downstream corporate limit	*780
			Just downstream of Conrail	*797
			Just upstream of Conrail	*800
			Upstream corporate limit	*800
		East Grassy Creek	About 730 feet downstream or northbound lane of U.S. Route 31	*795
			About 1000 feet downstream of Conrail	*800
			Just upstream of Conrail	*807
			Upstream corporate limit	807
	Maps available for inspection at the Town Hall, 60 North Railroad Street, Whiteland, Indiana.			
	Send comments to Honorable Hershell Sandlin, President of the Town Board, Town of Whiteland, Town Hall, 60 North Railroad Street, Whiteland, Indiana 46184.			
Maine	Naples (Town), Cumberland County.	Songo River	Confluence with Sebago Lake	*268
			Downstream side of Songo Lock Dam	*272
			Confluence of Bay of Naples	*274
		Crooked River	Confluence with Songo River	*272
			Upstream side of Songo Lock Road	*274
			Downstream side of State Route 302	*283
			Downstream side of State Route 11	*290
			Approximately 100' downstream of Edes Falls Road	*297
			Upstream side of Edes Road	*301
			Approximately 7,480' upstream of Edes Falls Dam	308
		Sebago Lake	Entire Shoreline within community	*268
		Bay of Naples	Entire Shoreline within community	*274
		Long Lake	Entire Shoreline within community	*274
	Maps available at the Naples Town Hall, Naples, Maine.			
	Send all comments to the Honorable Dana Watson, Chairwoman of the Board of Selectmen, Naples Town Hall, Naples, Maine 04055.			
Maryland	Bel Air (Town), Harford County	Plumtree Run	Confluence of Tributary 1	*306
			Downstream Corporate Limits	*318
			Upstream side of Atwood Road	*323
			Downstream of the Baltimore Pike Culvert	*331
			Upstream of the Baltimore Pike Culvert	*342
			Downstream of the West George Street/Thomas Street Culvert	*347
			Upstream of the West George Street/Thomas Street Culvert	*353
		Farnandis Branch	Downstream Corporate Limits	*229
			Approximately 1,000' upstream of the downstream Corporate Limits	*238
			Approximately 2,000' upstream of the downstream Corporate Limits	*251
			Approximately 2,900' upstream of the downstream Corporate Limits	*268
		Bynum Run	Approximately 13,600'downstream of Conowingo Road Bridge	*257
			Approximately 11,600' downstream of Conowingo Road Bridge	*263
			At the most downstream Corporate Limits	*324
			Upstream Conowingo Road (U.S. Business Route 1)	*333
			Approximately 1,500' upstream of Conwingo Road	*338
	Maps available at the Public Works Building, 705 Churchville Road, Bel Air, Maryland.			
	Send comments to Honorable William McFaul, Town Administrator of Bel Air, 39 Hickory Avenue, Bel Air, Maryland 21014.			
Massachusetts	Hardwick (Town), Worcester County.	Ware River	Downstream Corporate Limits	*485
			Approximately 2,825' upstream of Corporate Limits	*495
			Approximately 2,220' downstream of Bridge Street	*505
			Approximately 530' downstream of Bridge Street	*515
			Approximately 320' upstream of Bridge Street	*525

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
			950' upstream of Gilbertville Road	*535
			Downstream of Conrail Bridge	*545
			Goddard Road	*555
			Downstream of New Silver Bridge (Meilus Road)	*565
			Downstream of Wheelwright Dam	*572
			Upstream Corporate Limits	*579

Maps available for inspection at the Board of Selectmen's Office, Hardwick Town Hall, Hardwick, Massachusetts 01037.

Send comments to the Honorable Andrew Swistak, Chairman of the Hardwick Board of Selectmen, Hardwick Town Hall, Hardwick, Massachusetts 01037.

Massachusetts	Lancaster (Town), Worcester County.	Nashua River	Downstram Corporate Limits	*225
			Upstream side of Seven Bridge Road	*232
			Upstream Corporate Limits	*241
		North Nashua River	Confluence with Nashua River	*236
			Approximately 160' upstream of Main Street	*241
			Upstream side of North Main Street	*249
			Approximately 1,800' upsteam of Ponakin Road	*260
			Approximately 1.8 miles upstream of Ponakin Road	*270
			Upstream Corporate Limits	*280
		Goodridge Brook	Downstream Corporate Limits	*258
			Approximately 125' upstream of Parker Road	*266
			Approximately 1,063' upstream of Parker Road	*268

Maps available at the Town Clerk's Office, Lancaster Town Hall, Lancaster, Massachusetts.

Send comments to the Honorable Paul Constatino, Chairman of the Lancaster Board of Selectmen, Lancaster, Massachusetts 01523.

Massachusetts	Middleborough (Town), Plymouth County.	Nemasket River	Confluence with Taunton River	*25
			Upstream State Route 44	*31
			1,320' downstream Wareham Street	*41
			Downstream First Dam downstream Wareham Street	*49
			Upstream Wareham Street	*56
			400' downstream Assanompset Pond Dam	*62
		Taunton River	Downstream Corporate Limits	*19
			Upstream Corporate Limits	*27

Maps available for inspection at the Office of the Town Manager and Building Inspector, Middleborough Town Hall, Nickerson Avenue, Middleborough, Massachusetts.

Send comments to the Honorable George Mason Ryder, Chairman of the Middleborough Board of Selectmen, Middleborough Town Hall, Nickerson Avenue, Middleborough, Massachusetts 02346.

Massachusetts	Sheffield (Town), Berkshire County.	Housatonic River	Downstream Corporate Limits	*654
			Upstream of Rannapo Road	*655
			Upstream of Conrail and State Route 7A	*658
			Upstream of State Route 7	*659
			Confluence of Ironwork Brook	*660
			Upstream of Covered Bridge Lane	*663
			Upstream of Kellogg Road	*666
			Upstream Corporate Limits	*668
		Hubbard Brook	Upstream of North Main Street	*663
			Approximately 185' upstream of Cook Road	*664
		Schenob Brook	Upstream of Bow Wow Road	*663
			Upstream of Berkshire School Road	*665
			Barnum Street (Extended)	*667
			Downstream of Salisbury Road	*672

Maps available for inspection at the Sheffield Town Hall, RFD 3, Great Barrington, Mass. 01230.

Send comments to the Honorable Danal Bartholomew, Chairman of the Sheffield Board of Selectmen, RFD 3, Box 38, Great Barrington, Massachusetts 01230.

Massachusetts	Warren (Town) Worcester County	Quaboag River	Downstream Corporate Limits	*396
			Approximately 4,910' upstream of Corporate Limits	*419
			Approximately 3,880' downstream of most downstream Conrail bridge	*436
			Approximately 970' downstream of most downstream Conrail bridge	*468
			Most downstream Conrail bridge (Downstream side)	*476
			Most downstream Conrail bridge (Upstream side)	*484
			Gilbert Road (Upstream side)	*498
			South Street (Upstream side)	*522
			Upstream of Wright Fabric Company Dam	*538
			Downstream Breached Dam (Downstream side)	*544
			Downstream Breached Dam (Upstream side)	*550
			Valley Road	*563
			Bridge Street (Upstream side)	*583
			State Route 67 (Upstream side)	*592
			River Street (Upstream side)	*597
			Approximately 3,036' upstream of River Street	*601

Maps available for inspection at the Planning Board, Warren Town Hall, Warren, Massachusetts.

Send comments to the Honorable Donald Nickerson, Chairman of the Warren Board of Selectmen, Warren Town Hall, Warren, Massachusetts 01083.

Massachusetts	West Brookfield (Town), Worcester County.	Quaboag River	Downstream Corporate Limits	*603
			Upstream Corporate Limits	*605
		Mill Brook	Confluence with Quaboag River	*603
			Directly downstream of Shay Road	*607
			Directly downstream of Tyler Road	*617
			Approximately 2,100' upstream of Tyler Road	*627
			Directly upstream of Farm Bridge	*634
			Downstream of Wickaboag Valley Road (Upstream crossing)	*638
			Upstream Corporate Limits	*644

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Coys Brook	Confluence with Quaboag River	*605
			Upstream of Conrail	*609
			Upstream Corporate Limits	*617
	Maps available at the West Brookfield Planning Board, West Brookfield Town Hall, West Brookfield, Massachusetts.			
	Send comments to the Honorable Peter Coulphard, Chairman of the West Brookfield Board of Selectmen, West Brookfield Town Hall, West Brookfield, Massachusetts 01585.			
Michigan	(V) Lake Orion, Oakland County	Lake Orion	Shoreline	*988
		Paint Creek	Southern corporate limits	*966
			Just upstream Atwater Street	*973
			Just downstream Broadway	*975
			Just downstream Conrail	*977
			Just upstream Conrail	*988
	Maps available for inspection at the Department of Planning and Zoning, Village Hall, 21 East Church Street, Lake Orion, Michigan.			
	Send comments to Honorable Beth Dumala, Village President, Village of Lake Orion, Village Hall, 21 East Church Street, Lake Orion, Michigan 48035.			
Michigan	(C) Northville, Wayne County	Middle River Rouge	About 750 feet downstream of Seven Mile Road	*768
			Just downstream of Mill Pond Dam	*798
			Just upstream of Mill Pond Dam	*806
			Just downstream of Old Novi Road	*822
		Randolph Drain	Mouth at Middle River Rouge	*797
			Just upstream of High River	*835
			Just upstream of Lexington Street	*888
			About 100 feet upstream of the divergence of the Randolph Drain Diversion.	*922
		Randolph Drain Diversion	Confluence with Randolph Drain	*904
			Just upstream of Summerside Lane	*914
			Divergence from Randolph Drain	*921
		Thornton Creek Overflow	Confluence with Middle River Rouge	*821
			About 245 feet upstream of confluence with Middle River Rouge	*822
	Maps available for inspection at the Clerk's Office, City Hall, 215 West Main Street, Northville, Michigan.			
	Send comments to Honorable Paul Vernon, Mayor, City of Northville, City Hall, 215 West Main Street, Northville, Michigan 48167.			
Michigan	(Twp.) Northville, Wayne County	Middle River Rouge	Downstream corporate limits	*730
			Just upstream of Chessie System (near intersection of Northville Road and Edward Hines Parkway).	734
			Just upstream of Six Mile Road	*746
			Just downstream of Waterford Dam	*750
			Just upstream of Waterford Dam	*759
			Just upstream of Chessie System (near intersection of Northville Road and Jamestown Circle).	*766
			Upstream corporate limits (at Wayne County-Oakland County boundary).	*811
	Maps available for inspection at the Northville Township Hall, 16300 Sheldon Road, Northville, Michigan.			
	Send comments to Honorable John McDonnold, Supervisor, Township of Northville, Northville Township Hall, 16300 Sheldon Road, Northville, Michigan 48167.			
Michigan	(C) Riverview, Wayne County	Detroit River (Trenton Channel)	Shoreline	*578
		Huntington Creek	Mouth at Detroit River (Trenton Channel)	*578
			About 200 feet downstream of Electric Avenue	*580
			Just upstream of Electric Avenue	*584
		Jefferson Avenue Diversion	Mouth at Detroit River (Trenton Channel)	*578
			Just downstream of West Jefferson Avenue	*579
	Maps available for inspection at the Clerk's Office, City Hall, 17700 Fort Street, Riverview, Michigan.			
	Send comments to Honorable Jack Kesterson, Mayor, City of Riverview, City Hall, 17700 Fort Street, Riverview, Michigan 48192.			
Missouri	(C) Fisk, Butler County	Ditch No. 17	At southern corporate limits	*330
			At northern corporate limits	*330
	Maps available for inspection at the City Hall, Fisk, Missouri.			
	Send comments to Honorable Edward Call, Mayor, City of Fisk, City Hall, Fisk, Missouri 63940.			
Missouri	(C) Qulin, Butler County	Menorkenut Slough	About 150 feet downstream State Highway 53	*313
			About 1,150 feet upstream State Highway 53	*313
		Ditch No. 31	About 1,130 feet downstream County Road 659	*314
			Just downstream County Road 663	*314
	Maps available for inspection at the City Hall, P.O. Box 85, Qulin, Missouri.			
	Send comments to Honorable L. Davis, Mayor, City of Qulin, City Hall, P.O. Box 85, Qulin, Missouri 63961.			
Nevada	Boulder City (City), Clark County	Hemenway Wash	120 feet upstream from center of Pacifica Way	*2,020
			100 feet upstream from center of Ville Avenue	*2,168
		Wash B	100 feet upstream from center of Joshua Street	*2,211
		Wash C	1,400 feet east of the intersection of Corral Road and San Felipe Drive.	*2,376
		Wash D	50 feet upstream for center of U.S. Highway 93 westbound	*2,427
		Georgia Avenue Wash	100 feet upstream from center of Buchanan Boulevard	*2,129
			100 feet upstream from center of Highland Drive	*2,367
	Maps available for inspection at City Hall, 900 Arizona Street, Boulder City, Nevada.			
	Send comments to Honorable Robert Ferraro, P.O. Box 367, Boulder City, Nevada 89005.			

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Nevada	Henderson (City), Clark County	Duck Creek	150 feet upstream from center of Sunset Road	*1,929
		Duck Creek Tributary	100 feet upstream from center of Stephani Street	*1,685
		Shallow Flooding	Intersection of Edgemont Drive and Fletcher Road	*2
			On Horizon Drive, 1 mile northeast of its intersection with Eastern Avenue	*1
			1.1 miles east of the intersection of Newport Drive and Magic Way	*1
	Maps available for inspection at City Hall, 243 Water Street, Henderson, Nevada			
	Send comments to Honorable Lorin Williams, 243 Water Street, Henderson, Nevada 89015.			
New Hampshire	Roxbury (Town), Cheshire County	Otter Brook	Approximately 4,890' downstream of Roxbury Road	*582
			Approximately 4,140' downstream of Roxbury Road	*590
			Approximately 3,190' downstream of Roxbury Road	*600
			Approximately 2,170' downstream of Roxbury Road	*610
			Roxbury Road	*622
			Approximately 1,090' upstream of Roxbury Road	*630
			Approximately 2,440' upstream of Roxbury Road	*640
			Approximately 3,470' upstream of Roxbury Road	*650
			Approximately 4,380' upstream of Roxbury Road	*660
			Approximately 5,070' upstream of Roxbury Road	*668
	Maps available for inspection at the Roxbury Town Office, Box 25, Keene, New Hampshire.			
	Send comments to Honorable G. Pyne, Chairman of the Roxbury Board of Selectmen, Roxbury Town Office, Box 25, Keene, New Hampshire 03431.			
New Jersey	Corbin City (City), Atlantic County.	Tuckahoe River	Entire shoreline	*9
	Maps available for inspection at the City Municipal Building, Route 50, Corbin City, New Jersey.			
	Send comments to Honorable Dorsey Hostler, Mayor of Corbin City, R.D. 1, Route 50, Corbin City, New Jersey.			
New Jersey	Demarest (Borough), Bergen County.	Tenakill Brook	Downstream Corporate Limits	*32
			Upstream Hardenburgh Avenue	*37
			Upstream Corporate Limits	*39
		Demarest Brook	Downstream Corporate Limits	*40
			Upstream Meadow Road	*42
			Downstream County Road	*45
		Cresskill Brook	Downstream Corporate Limits	*43
			530'downstream County Road	*45
			Downstream County Road	*50
	Maps available for inspection at the Borough Hall, 118 Serpentine Road, Demarest.			
	Send comments to Honorable Vi Laamanen, Borough Coordinator, 118 Serpentine Road, Demarest, New Jersey 07627.			
New Jersey	High Bridge (Borough), Hunterdon County.	Raritan River	Downstream Corporate Limits	*219
			Upstream Arch Street Bridge	*233
			Upstream Conrail	*242
			Upstream Taylor-Wharton Railroad Bridge	*257
			Downstream Lake Solitude Dam	*263
			Upstream Lake Solitude Dam	*290
			Upstream Corporate Limits	*290
		Willoughby Brook	Downstream Corporate Limits	*294
			Approximately 800' upstream of Corporate Limits	*304
			Upstream Conrail	*322
			Upstream Corporate Limits	*330
	Maps available for inspection at the Office of the Borough Clerk, Municipal Building, 71 Main Street, High Bridge, New Jersey.			
	Send comments to Honorable Donald A. Manning, Mayor of High Bridge, 71 Main Street, High Bridge, New Jersey 09929.			
New York	Buffalo (City) Erie County	Buffalo River	Confluence with Lake Erie	*581
			Upstream side of Seneca Street Bridge	*587
			Upstream side of South Ogden Street Bridge	*592
		Cazenovia Creek	Confluence with Buffalo River	*584
			Upstream side of Cazenovia Parkway Bridge	*595
			Corporate Limits	*599
		Scajaquada Creek	315' downstream from Interstate Route 190	*573
			580' downstream from Conrail Bridge	*581
			Upstream side of State Route 198	*586
			Upstream crossing of Private Road	*592
			4,330' from Private Road	*609
	Maps available for inspection at City Hall, Division of Planning, Room 313, Buffalo, New York.			
	Send comments to Honorable James D. Griffin, Mayor of Buffalo, City of Buffalo, City Hall, Buffalo, New York 14202.			
New York	South Nyack (Village), Rockland County.	Hudson River	Entire shoreline	*8
	Maps available at the South Nyack Village Hall, 282 South Broadway, South Nyack.			
	Send comments to Honorable Dr. Raymond P. Esposito, Mayor, 282 South Broadway, South Nyack, New York 10960.			
New York	Stony Point (Town), Rockland County.	Hudson River	Entire shoreline within community	*8
		Tributary No. 1 to Hudson River	Confluence with Hudson River	*8
			Downstream of Stony Point State Park	*12
			Upstream of Stony Point State Park	*15

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 200' upstream of culvert	*25
			Approximately 25' downstream of most upstream crossing of Park Road.	*40
			Approximately 200' upstream of most upstream crossing of Park Road.	*60
			Approximately 450' upstream of most upstream crossing of Park Road.	*82
			Downstream of Lighthouse Court Culvert	*86
			Upstream of Lighthouse Court Culvert	*102
			Downstream of Maryann Court	*113
			Upstream of Maryann Court	*118
			Downstream of Adams Drive	*125
			Upstream of Adams Drive	*130
			Approximately 330' upstream of Adams Drive	*160
			Approximately 640' upstream of Adams Drive	*190
			Approximately 1,025' upstream of Adams Drive	*220
			Wayne Avenue	*224
		Cedar Pond Brook	Confluence with Hudson River	*8
			Upstream of Lowland Hill Road	*14
			Upstream of U.S. Routes 9W and 202	*25
			Approximately 700' upstream of U.S. Routes 9W and 202	*35
			Confluence of Tributary to Cedar Pond Brook	*51
		Tributary to Cedar Pond Brook	Confluence with Cedar Pond Brook	*51
			Approximately 350' upstream of confluence with Cedar Pond Brook	*60
			Downstream of State Route 210	*72
			Downstream of Private Drive	*85
			Upstream of Private Drive	*94
			Upstream of Washburns Lane	*101
			Downstream of Sengstacken Road Culvert	*112
			Upstream of Sengstacken Road Culvert	*118
			Upstream of Central Highway and Filors Lane	*132
			Upstream Corporate Limits	*141
	Maps available for inspection at the Town Hall, 11 New Main Street, Haverstraw, New York.			
	Send comments to Honorable Lucien H. Conklin, 74 East Main Street, Stony Point, New York 10980.			
Oklahoma	City of Jenks, Tulsa County	Arkansas River	Just upstream of East Main Street	*615
		Polecate Creek	Just upstream of S. Peoria Avenue	*620
			Just upstream of S. 33rd W. Avenue	*633
		Posey Creek	Just upstream of Missouri Pacific Railroad	*606
			Just upstream of 141st Street	*620
		Coal Creek	Approximately 100 feet downstream of 121st Street	*644
	Maps available at City Planner's Office, City Hall, 123 East Main Street, Jenks, Oklahoma 74037.			
	Send comments to Mayor R. O'Donley or Mr. Richard Hall, City Planner, City Hall, 123 East Main Street, Jenks, Oklahoma 74037.			
Oklahoma	Town of Maysville, Carvin County	Beef Creek	Just upstream of Williams Street	*939
			Just downstream of Mays Street	*941
	Maps available for inspection at City Hall, 510 West Main Street, Maysville, Oklahoma 73057.			
	Send comments to Mayor Lynn Kein, or Ms. Norma Hope, Vice-Mayor, City Hall, 510 West Main Street, Maysville, Oklahoma 73057.			
Oregon	Brownsville (City), Linn County	Calapooia River	At center of Southern Pacific Railroad crossing of Calapooia River	*329
			200 feet south from intersection of Calapooia Avenue and Howe Street.	*341
	Maps available for inspection at City Hall, Brownsville, Oregon.			
	Send comments to Honorable Tony Gorsline, P.O. Box 188, Brownsville, Oregon 97327.			
Oregon	Jackson County (Unincorporated Areas).	Lazy Creek	Upstream limit of detailed study, approximately 180 feet upstream of the City of Medford corporate limits.	*1,590
		Unnamed Tributary to Larson Creek.	Intersection of Creek and center of North Phoenix Road	*1,540
		Griffin Creek	30 feet upstream from center of Scenic Avenue	*1,234
			Intersection of Bellinger Lane and Minear Road	*1,459
		Pleasant Creek	Intersection of Creek and center of Queens Branch Road	*1,122
		Foots Creek	Intersection of Creek and center of Foots Creek Road	*1,103
		Little Butte Creek	75 feet upstream from center of Crater Lake Highway State Highway 62.	*1,281
			At confluence with Schoolhouse Creek	*1,438
		Lone Pine Creek	Intersection of Creek and center of Foothill Road (at upstream limit of detailed study).	*1,565
		Larson Creek	Intersection of Creek and center of Ellendale Drive	*1,406
		Crooked Creek	25 feet upstream from center of Stewart Avenue	*1,402
			Intersection of Dark Hollow Road and Skyview Drive	*1,567
		Daisy Creek	10 feet downstream from center of Third Street South	*1,742
		Evans Creek	At confluence with Maple Creek	*1,016
			10 feet upstream from center of Covered Bridge Road	*1,136
		Rogue River	Intersection of Savage Creek Road and U.S. Highway 99	*979
			500 feet upstream from center of Table Rock Road	*1,198
			Intersection of River and center of Dodge Bridge State Highway 234	*1,285
			At confluence with Big Butte Creek	*1,531
		Wagner Creek	At confluence with Bear Creek	*1,562
		Ashland Creek	400 feet upstream from center of Bridge to Treatment Plant	*1,715

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Coleman Creek	Intersection of Creek and center of U.S. Highway 99	*1,488
		Clay Creek	Intersection of Creek and center of East Main Street	*1,905
		Bear Creek	10 feet upstream from center of Kirtland Road	*1,168
			200 feet upstream from center of Fern Valley Road	*1,472
			Intersection of Valley View Road and North Main Street U.S. Highway 99.	*1,659
	Maps available for inspection at Jackson County Courthouse, Medford, Oregon.			
	Send comments to Honorable Jon Deason, Jackson County Courthouse, County Commissioner's Office, Medford, Oregon 97501.			
Pennsylvania	Bradford (City), McKean County	West Branch Tunungwant Creek	Confluence with Tunungwant Creek	*1,435
			Kennedy Street (Upstream side)	*1,439
			Barbour Street (Downstream side)	*1,446
			Corporate Limits	*1,452
			Approximately 3,200' upstream of Corporate Limit	*1,468
		East Branch Tunungwant Creek	Confluence with Tunungwant Creek	*1,435
			Elm Street (Upstream side)	*1,442
			Corporate Limits	*1,449
		Main Stem Tunungwant Creek	Corporate Limits	*1,421
			Confluence with Kendall Creek	*1,426
			Chessie System (Upstream side)	*1,432
			Confluence with East and West Branch Tunungwant Creek	*1,435
		Kendall Creek	Confluence with Tunungwant Creek	*1,426
			East Main Street (Downstream side)	*1,429
			Corporate Limit	*1,441
	Maps available at the Public Works Department, City Hall, 24 Kennedy Street, Bradford, Pennsylvania.			
	Send comments to Honorable Maxwell Moore, Mayor of Bradford, City Hall, 24 Kennedy Street, Bradford, Pennsylvania 16701.			
Pennsylvania	Brownsville (Borough), Fayette County.	Monogahela River	Downstream corporate Limits	*771
			Bridge Street	*771
			Upstream Corporate Limits	*772
		Dunlap Creek	Confluence with Monongahela River	*771
			Upstream Corporate Limits	*771
	Maps available for inspection at the Municipal Building, Brownsville, Pennsylvania.			
	Send comments to Honorable Paul Thomas, Jr., Mayor of Brownsville, Municipal Building, Brownsville, Pennsylvania 15417.			
Pennsylvania	Foster (Township), McKean county.	Tunungwant Creek	Downstream State boundary	*1,411
			Confluence with Foster Brook	*1,417
			Approximately 420' upstream of Chessie System	*1,424
		Foster Brook	Confluence with Tunungwant Creek	*1,417
			East Main Street (Upstream side)	*1,428
			Approximately 450' downstream of Fourth Street	*1,435
			Beechwood Road (Upstream side)	*1,466
			Fairview Heights (Upstream side)	*1,477
			Harrisburg Run Road (Upstream side)	*1,496
			Derrick Road (Downstream crossing—upstream side)	*1,519
			Derrick Road (Upstream crossing—upstream side)	*1,550
			State Route 646 (Upstream side)	*1,580
		Kendall Creek	Downstream Corporate Limits	*1,441
			Approximately 2,400' upstream of Corporate Limits	*1,457
			Lafferty Road (Upstream side)	*1,474
			Approximately 3,500' upstream of Lafferty Road	*1,495
			Confluence of Totten Hollow Run	*1,519
			Approximately 3,100' upstream of Totten Hollow Road	*1,546
			Approximately 1,100' downstream of State Route 246	*1,560
			State Route 246 (Upstream side)	*1,572
			Approximately 3,400' upstream of confluence of Tributary to Kendall Creek.	*1,591
			Approximately 4,975' upstream of State Route 246	*1,614
	Maps available at the Foster Township Building.			
	Send comments to Honorable Robert F. Riley, Chairman of the Foster Board of Supervisors, 14 North 3rd Street, Bradford, Pennsylvania 16701			
Pennsylvania	Juniata (Township), Blair County	Blair Gap Run	Approximately 280' downstream of Downstream Corporate Limits	*1,137
			Downstream Corporate Limits	*1,139
			Upstream side of Private Road approximately 3,600' downstream of Legislative Route 07043.	*1,157
			Approximately 2,100' downstream of Legislative Route 07043	*1,177
			Approximately 855' downstream of Legislative Route 07043	*1,197
			Upstream Legislative Route 07043	*1,215
			Upstream side of Private Road approximately 1,235' upstream of Legislative Route 07043.	*1,235
			Upstream of Private Road approximately 1,735' upstream of Legislative Route 07043.	*1,247
			Downstream of Private Road approximately 2,595' upstream of Legislative Route 07043.	*1,261
			Approximately 4,395' upstream of Legislative Route 07043	*1,290
			Approximately 5,355' upstream of Legislative Route 07043	*1,310
			Approximately 6,205' upstream of Legislative Route 07043	*1,330
			Approximately 7,135' upstream of Legislative Route 07043	*1,350
			Approximately 8,125' upstream of Legislative Route 07043	*1,369
		Poplar Run	Downstream Corporate Limits	*1,235
			Approximately 920' upstream of Downstream Corporate Limits	*1,255

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream of Private Road approximately 2,520' downstream of route 382 extended.	*1,300
			Upstream of Private Road approximately 1,400' downstream of Route 382 extended.	*1,327
			Confluence of Tributary to Poplar Run	*1,355
			Upstream of Private Drive approximately 1,600' upstream of Route 382 extended.	*1,399
			Upstream of Private Drive approximately 2,365' downstream of downstream crossing of Legislative Route 07035.	*1,423
			Approximately 1,230' downstream crossing of downstream of Legislative Route 07035.	*1,455
			Upstream of downstream crossing of Legislative Route 07035	*1,497
			Approximately 920' downstream of upstream crossing of Legislative Route 07035.	*1,538
			Approximately 120' upstream of upstream crossing of Legislative Route 07035.	*1,575
			Approximately 1,615' upstream of upstream crossing of Legislative Route 07035.	*1,633
			Approximately 2,605' upstream of upstream crossing of Legislative Route 07035.	*1,687

Maps are available by contacting the Juniata Township Secretary, Mr. Ronald Neff, at (814) 695-5335.

Send comments to Honorable Clyde W. Miller, Chairman of the Juniata Board of Supervisors, R. D. 5, Box 115, Duncansville, Pennsylvania 16635.

Pennsylvania	Plum (Borough), Allegheny County	Abers Creek	Old Frankstown Road	*936
			Approximately 950' upstream of Old Frankstown Road	*939
			Upstream of New Texas Road	*946
			Upstream of State Route 286	*953
			Confluence of Humms Run	*957
			Approximately 1,660' upstream of State Route 286	*964
			Approximately 670' downstream of Malabar Drive	*970
			Upstream of Malabar Drive	*979
			Tahoe Drive (Extended)	*983
			Approximately 340' upstream of Tahoe Drive (Extended)	*987
		Allegheny River	Downstream Corporate Limits	*744
			Approximately 5,600' upstream of Lock and Dam No. 3	*748
			Upstream Corporate Limits	*752
		Humms Run	Confluence with Abers Creek	*957
			Upstream of Pine Valley Drive	*962
			Approximately 900' upstream of Pine Valley Drive	*926
			Approximately 370' downstream of State Route 286	*974
			Approximately 80' upstream of State Route 286 (Downstream crossing).	*981
			Approximately 800' upstream of State Route 286	*984
			Cape Cod Drive	*993
			Sandune Drive	*1,001
			Downstream of North Duane Drive	*1,011
			Approximately 950' upstream of North Duane Drive	*1,022
			Upstream of State Route 286 (Upstream crossing)	*1,030
			Confluence with Tributary 1 to Humms Run	*1,036
			Approximately 50' downstream of Holiday Park Drive	*1,047
			Holiday Park Drive Culvert (Upstream side)	*1,058
			Holiday Park Drive Culvert (Downstream side)	*1,060
		Little Plum Creek	Confluence with Plum Creek	*906
			Approximately 3,000' upstream of Pennsylvania Turnpike	*911
			Approximately 1,300' downstream of Unity Railways Company	*920
			Approximately 70' downstream of Unity Railways Company	*929
			Approximately 100' upstream of Unity Railways Company	*938
			Approximately 360' downstream of New Texas Road	*939
			New Texas Road	*942
		Plum Creek	Dowstream Corporate Limits	*773
			Approximately 1,300' upstream of Corporate Limits	*780
			Approximately 6,750' downstream of Hulton Road	*790
			Approximately 5,030' downstream of Hulton Road	*800
			Approximately 2,870' downstream of Hulton Road	*810
			Approximately 1,280' downstream of Hulton Road	*820
			Upstream of Hulton road	*831
			Approximately 1,250' upstream of Hulton Road	*840
			Approximately 300' downstream of Conrail	*850
			Steurnagle Lane	*861
			Approximately 1,600' upstream of Miltown Road	*870
			Approximately 3,330' upstream of Miltown Road	*880
			Downstream of Conrail	*890
			Mary Street	*896
			Bessemer and Lake Erie Railroad Culvert (Downstream side)	*899
			Bessemer and Lake Erie Railroad Culvert (Upstream side)	*906
			Approximately 240' upstream of Leechburg Road	*910
			Upstream of Universal Road	*918
			Approximately 500' upstream of Universal Road	*925
			Upstream of Pennsylvania Turnpike	*931
			Approximately 75' downstream of Millers Lane	*943
			Approximately 825' downstream of Anderson Lane	*950
			Anderson Lane	*958
			Approximately 1,850' upstream of Anderson Lane	*970
			Approximately 1,675' downstream of State Route 380 (Downstream crossing).	*980

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 875' downstream of State Route 380 (Downstream crossing).	*990
			State Route 380 (Downstream crossing)	*1,003
			State Route 380 (Upstream crossing)	*1,015
		Pucketa Creek	Confluence with Allegheny River	*752
			Approximately 1,470' downstream of Crystal Drive	*760
			Upstream of Crystal Drive	*767
			Approximately 750' upstream of Crystal Drive	*770
			State Road 366	*783
	Maps available for inspection at the Plum Municipal Building, 4575 New Texas Road, Pittsburgh, Pennsylvania.			
	Send comments to Honorable Anthony B. O'Block, Mayor of Plum, 4575 New Texas Road, Pittsburgh, Pennsylvania 15239.			
Pennsylvania	Summit (township), Erie County	Walnut Creek	Approximately .11 mile downstream of downstream crossing of Interstate 90.	*1,068
			Upstream Interstate 90	*1,070
			Upstream Holiday Inn Exit	*1,079
		Walnut Creek Tributary	Upstream of upstream crosing of Interstate 90	*1,082
	Maps available at the Summit Township Building.			
	Send comments to Honorable John Colvin, Chairman of the Summit Board of Supervisors, 1040 Townhall Road, Erie, Pennsylvania 16509.			
Pennsylvania	Union (Township), Erie County	South Branch French Creek	Upstream of Corporate Limits (and Union-LeBeouf Road)	*1,215
			Approximately .575 miles upstream of Corporate Limits	*1,225
			Upstream of first downstream Conrail crossing	*1,234
			Approximately 1 mile upstream of downstream Conrail crossing	*1,243
			Approximately .3 mile downstream of second downstream Conrail crossing.	*1,279
			Approximately 1.3 miles downstream of second downstream Conrail crossing.	*1,295
			Downstream of upstream Conrail crossing	*1,304
	Maps available at the residence of Mr. Merle Sexton, Secretary of Union Township, R. D. 1, Union City, Pennsylvania.			
	Send comments to Honorable Walter Bem, Chairman of the Union Board of Supervisors, R. D. 1, Union City, Pennsylvania 16438.			
Pennsylvania	Venango (Township), Erie County.	West Branch French Creek	Approximately 1 mile downstream Corporate Limits	*1,286
			Upstream of State Route 8 & 89 at Corporate Limits	*1,290
			Upstream State Route 89	*1,295
			Approximately 1 mile upstream of State Route 89	*1,300
			Approximately 2 miles upstream of State Route 89	*1,306
			Upstream Page Road	*1,314
			Upstream Corporate Limits	*1,318
	Maps available at the Venango Township Building.			
	Send comments to Honorable Paul Vogel, Chairman of the Venango Board of Supervisors, R. D. 1, Wattsburg, Pennsylvania 16442.			
Texas	Bellaire (City), Harris County	Brays Bayou	Southeast corner of community Corporate Limits	*52
	Maps available at the Bellaire City Hall, 7008 South Rice Avenue, Bellaire, Texas.			
	Send comments to Honorable Lawrence Folse, Mayor of Bellaire, Bellaire City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401.			
Texas	City of Big Spring, Howard County.	Beals Creek	Just upstream of FM700 (Marcy Drive)	*2,391
			Just upstream of Birdwell Lane	*2,406
			Just downstream of U.S. Highway 87 (Gregg Street)	*2,411
		Big Springs Draw	Just upstream of Baylor Boulevard	*2,412
			Just upstream of Golaid Street	*2,506
			Just upstream of U.S. Highway 87 (upstream most crossing)	*2,603
		Stream BSP 1	Just upstream of Parkway Road	*2,602
		Stream BSP 2	At the southern corporate limits	*2,643
		Big Sandy Draw	Just upstream of North Service Road to Interstate Highway 20 (U.S. Highway 80).	*2,403
		Reads Draw	Just upstream of North Service Road to Interstate Highway 20 (U.S. Highway 80).	*2,456
		Stream BSP 3	Just upstream of North 8th Street	*2,443
		Stream BSP 4	Just upstream of North Service Road to Interstate Highway 20 (U.S. Highway 80).	*2,495
		Stream BSP 5	Just upstream of Missouri Pacific Railroad (Spur Track)	*2,433
	Maps available for inspection at Housing and Community Development—Building Co 25, Big Spring, Texas 797220.			
	Send comments to Mayor Clyde Angel or Mr. Don Davis, City Manager, City Hall, 40 Nolan Street, Big Spring, Texas 79721.			
Texas	City of Brady, McCullock County.	Brady Creek	Just downstream of Atchison Topeka and Santa Fe Railway	$1,662
			Just upstream of Main Street	*1,663
			Just upstream of Bridge Street	*1,667
			Just upstream of U.S. Highway 283	*1,673
		Stream Brady 1	Just downstream of State Highway 2309	*1,663
			Just upstream of State Highway 2309	*1,667
		Post Oak Creek	Approximately 300 feet upstream of 11th Street	*1,680
		Live Oak Creek	Approximately 600 feet upstream of White Street	*1,676
	Maps available for inspection at City Hall, Brady, Texas 76825.			
	Send comments to Mayor ED Davenport, Mr. Dennis Jones, City Superintendent, City Hall, P.O. Box 351, Brady, Texas 76825.			

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Texas	City of Breckenridge, Stephens County.	Gonzales Creek	Just upstream of Farm Market Road 287	*1,176
			Just upstream of Dryer Street	*1,184
			Just upstream of Hullum Street	*1,190
		Stream BK-1	Just upstream of intersection of Lindsey Street and Court Avenue	*1,185
			Just upstream of McAmis Avenue	*1,189
			Just upstream of Shelton Avenue	*1201
		Stream BK-2	Just upstream of Miller Avenue	*1,192
			Approximately 200 feet upstream of Live Oak Avenue	*1,202
	Maps available for inspection at City Hall, 120 West Elem Street, Breckenridge, Texas 76024.			
	Send comments to Mayor Lloyd Mayberry or Mr. John Connally, Mayor-Protem, City Hall, 120 West Elm Street, Breckenridge, Texas 76024.			
Texas	City of Brownfield, Terry County	Lost Draw	Just upstream of Webb Street	*3,275
			Just upstream of U.S. Highway 62 and 385	*3,281
			Just downstream of Bridges Street	*3,295
		Playa No. 4	East of intersection of Main and Sage Streets	*3,297
		Playa No. 3	Approximately 700 feet northeast of intersection of Tahoka Road and Cedar Street.	*3,300
		Playa No. 2	Approximately 700 feet northwest of intersection of Tahoka Road and Cedar Street.	*3,301
	Maps available for inspection at City Hall, 218 West Main Street, Brownfield Texas 79316.			
	Send comments to Mayor T. C. Williams, Jr. or Mr. Jake Geron, City Manager, City Hall, 218 West Main Street, Brownfield, Texas 79316.			
Texas	City of Copperas Cove, Coryell County.	Clear Creek	Just upstream of Farm Market 3,046	*1,010
		Stream CC-2	Just upstream of Farm Market 116	*1,013
			Just upstream of Lynn Lane	*1,046
			At Deorsam Drive	*1,070
			Just upstream of Georgetown Road	*1,074
			At 21st Street	*1,133
		House Creek	At Spillway Park Dam	*1,021
			Approximately 60 feet downstream of Farm Market 1113	*1,025
		Turkey Run	Just upstream of Atchison Topeka & Santa Fe Railroad	*1,049
			At Robertson Avenue	*1,077
			At Amthor Avenue	*1,085
			At Bowen Avenue	*1,103
	Maps available for inspection at City Hall, 507 South Main Street, Copperas Cove, Texas 79522.			
	Send comments to Mayor R. D. Mitchell, or Mr. Kenneth Moseley, Mayor Pro-Tem, City Hall, 507 South Main Street, Copperas Cove, Texas 79522.			
Texas	City of Graham, Young County	Farmers Branch	Pine Street extended	*1,057
			Victory Street extended	*1,055
		Stream GR-2	At the Eastern Corporate Limits	*1,077
			At the Northern Corporate Limits	*1,082
		Shawnee Branch	Brazos Street extended	*1,036
			Just upstream of South Street	*1,036
		Salt Creek	Shawnee Street extended	*1,036
			Just upstream of Farm Market 61	*1,036
			Just upstream of Tesco Village	*1,037
	Maps available for inspection at City Hall, Graham, Texas 76046.			
	Sends comments to Mayor Norman Stovall, Jr., or Mr. Larry M. Fields, City Manager, City Hall, P.O. Box 690, Graham, Texas 76046.			
Utah	Brigham City (City), Box Elder County.	Box Elder Creek	100 feet upstream from center of Union Pacific Railroad Bridge	*4,283
			75 feet upstream from center of 200 West Street	*4,333
			75 feet upstream from center of 400 East Street	*4,405
	Maps available for inspection at City Hall, Brigham City, Utah.			
	Send comments to Honorable Peter T. Knudsen, 20 North Main Street, Brigham City, Utah 84302.			
Utah	Farmington (City), Davis County	Davis Creek	100 feet upstream of center of 200 East	*4,348
		Steed Creek	100 feet upstream of center of 200 East	*4,367
		Farmington Creek	100 feet upstream of center of Clark Lane	*4,255
			150 feet upstream of center of 300 North	*4,278
			100 feet upstream of center of State Highway 106	*4,315
		Rudd Creek	400 feet upstream of center of Skyline Drive	*4,484
		Shepard Creek	100 feet upstream of center of State Highway 106	*4,326
			120 feet upstream of center of abandoned Bramberger Railroad	*4,370
		Haight Creek	200 feet upstream of center of frontage road to Interstate 15	*4,282
	Maps available for inspection at City Hall, Farmington, Utah.			
	Send comments to Honorable E. T. Johnson, 286 South 200 East, Farmington, Utah 84035.			

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Utah	Fruit Heights (City), Davis County	Baer Creek	150 feet upstream from center of U.S. Highway 89	*4,534
		Haight Creek	200 feet upstream from center of U.S. Highway 89	*4,489
	Maps available for inspection at City Hall, Fruit Heights, Utah.			
	Send comments to Honorable Neil K. Noorda, 281 South Mountain Road, Fruit Heights, Utah 84037.			
Vermont	Georgia (Town), Franklin County	Lake Chaplain	Entire shoreline within Corporate Limits	*102
		Lamoille River	Arrowhead Mountain Lake at downstream County Boundary	*291
			Upstream of Central Vermont Railroad	*293
			100' upstream of U.S. gaging station No. 04292500	*303
			Approximately 550' downstream of confluence with Beaver Meadow Brook.	*313
			Upstream Corporate Limits	*332
	Maps available for inspection at the Town Clerk's Office, Town Office Building, Georgia, Vermont.			
	Send comments to the Honorable Harmon Loomis, Chairman of the Georgia Board of Selectmen, Georgia Town Office Building, Georgia, Vermont.			
Washington	Lower Elwha Indian Reservation, Clallam County.	Elwha River	100 feet due south of intersection of Main Street and Dirt Road heading toward the beach.	*13
		Elwha River Overflow	75 feet south along Stratton Road from its intersection with Main Street.	*12
		Strait of Juan de Fuca	Intersection of Main Street and Dirt Road heading toward the beach	*12
	Maps available for inspection at Tribal Community Offices, Lower Elwha Road, Port Angeles, Washington.			
	Send comments to Honorable Gerald Charles, P.O. Box 2034, Port Angeles, Washington 98362.			
Wisconsin	(C) Onalaska, La Crosse County	Green Coulee	About 0.54 mile downstream Main Street	*710
			Just upstream Main Street	*715
		Black River	At downstream corporate limits	*647
			At upstream corporate limits	*648
	Maps available for inspection at the Office of the City Clerk, City Hall, 415 Main Street, Onalaska, Wisconsin.			
	Send comments to Honorable Earl W. Phillips, Mayor, City of Onalaska, City Hall, 415 Main Street, Onalaska, Wisconsin 54650.			
Wisconsin	(C) Rice Lake, Barron County	Red Cedar River	At downstream corporate limits	*1,105
			About 475 feet upstream Allen Street	*1,114
			Just downstream dam (near Main Street)	*1,117
			Just upstream dam (near Main Street)	*1,125
			At upstream corporate limits	*1,125
		Unnamed Tributary to Red Cedar River.	At confluence with Red Cedar River	*1,111
			Just downstream of Southwest Street at upstream corporate limits	*1,120
		Rice Lake	Shoreline	*1,125
	Maps available for inspection at the Office of the Building Inspector, City Hall, 11 East Marshall Street, Rice Lake, Wisconsin.			
	Send comments to Honorable David Berner, Mayor, City of Rice Lake, City Hall, 11 East Marshall Street, Rice Lake, Wisconsin 54868.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 9, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39615 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1355, 1356, and 1357

Foster Care Maintenance Assistance and Adoption Assistance; Child Welfare Services; Meetings

AGENCY: Office of Human Development Services (OHDS), HHS.

ACTION: Notice of Meetings in Relation to a Proposed Regulation.

SUMMARY: This Notice sets forth the dates, times and places for the forthcoming public meetings in relation to a rulemaking procedure to Implement the Adoption Assistance and Child Welfare Act of 1980.

DATES: See Supplementary Information.

ADDRESS: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Joyce Strom, Associate Commissioner, Services for Children and Youth, Administration for Children, Youth and Families, (202) 755–7600.

SUPPLEMENTARY INFORMATION: Public meetings on this proposed rulemaking will be held on the dates and at the locations listed below. For further information, contact the Regional Program Director in the appropriate Regional Office of the Administration for Children, Youth and Families.

January 9, Federal Reserve Bank Building Auditorium, 600 Atlantic Avenue, Boston, Massachusetts 02210, Contact: Tina Janey Burell (617) 223–6450

January 9, Richard B. Russell Building, 75 Spring Street, N.W., Atlanta, Georgia 39323, Contact: James K. Vaughn (404) 221–2300

January 12, Federal Building, Rooms 13029

and 15018, 450 Golden Gate Avenue, San Francisco, California 94102. Contact: Beverly Wood (415) 556–6153

January 13, American Dental Society Building, 211 E. Chicago Avenue, Chicago, Illinois 60606. Contact: Forrest Lewis (312) 353–1784

January 14, Dallas Public Library, Room: Auditorium, 1954 Commerce Street, Dallas, Texas 75202. Contact: Patricia Newlin (214) 767–6596

January 16, Federal Building, Room 140, 601 E. 12th Street, Kansas City, Missouri 64106. Contact: Richard Schrader (816) 374–5401

January 19, The Regency Inn, Room: House of Common, 3900 Elati Street, Denver, Colorado 80216. Contact: Ms. Sue Dignum (303) 292–9010

January 23, William J. Green Federal Building, Room 3306, 600 Arch Street, Philadelphia, Pennsylvania 19101. Contact: Donald Barrow (215) 596–0390

January 28, World Trade Building, Room 4430, 2 World Trade Center, New York, New York 10047. Contact: Caroline Gionta (212) 264–2405

January 29, New Federal Building, 915 Second Avenue, Seattle, Washington 98101. Contact: Ms. Jeanne Craig (206) 442–0838

Interested parties wishing to apply for financial assistance in meeting the expenses of gathering comments on the proposed rule or appearing at one of the public meetings should refer to the Notice of Demonstration Project to Assist Those Wishing to Comment on the Proposed Regulation Implementing the Adoption Assistance and Child Welfare of 1980 published on December 17, 1980 in the **Federal Register.**

John A. Calhoun,

Commissioner, ACYF.

[FR Doc. 80-40088 Filed 12-23-80; 8:45 am]

BILLING CODE 4110-92-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Gen. Docket No. 80-603]

Inquiry Into the Development of Regulatory Policy in Regard To Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; Extension of comment and reply comment period.

SUMMARY: Commission is extending time in which to file comments in its Inquiry into the development of regulatory policy in regard to Direct Broadcast Satellites. This action is being taken to allow parties comment on an application for a Satellite-to-Home Subscription Television Service submitted by Satellite Television Corporation.

DATES: Comments on interim systems must be received on or before February 2, 1981 and reply comments must be received on or before February 17, 1981. Comments related to permanent regulatory issues must be received on or before March 31, 1981 and reply comments must be received on or before May 29, 1981.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce A. Franca, Office of Plans and Policy, (202) 653–5940.

SUPPLEMENTARY INFORMATION:

Order Extending Time; Comments and Reply Comments

In the matter of inquiry into the development of regulatory policy in regard to Direct Broadcast Satellites for the period following the 1983 Regional Administrative Radio Conference.

Adopted: December 19, 1980;

Released: December 22, 1980.

By the Deputy Chief, Office of Plans and Policy:

1. On October 29, 1980 [45 FR 72719], the Commission issued a Notice of Inquiry, in the above-captioned proceeding, dealing with the development of regulatory policies for direct broadcast satellite (DBS) systems. The Notice requested that comments be filed with regard to interim DBS system matters on November 28, 1980 and reply comments on December 15, 1980.[1] The Notice also requested that comments concerning permanent regulatory policies be filed on January 31, 1981 with reply comments due on March 31, 1981.

2. On December 17, 1980, after the close of the period in which to file comments on interim matters, Satellite Television Corporation (STC) submitted an application to the Commission for a permit to construct the first phase of an experimental direct broadcast satellite system for use in delivering satellite subscription service to the American public. The application filed by STC seeks authority to construct two high-powered PAM–D class satellites to operate in the 12.2–12.7 GHz band. In its application, STC addresses the procedures that it believes would be lawful and appropriate for processing its experimental application. The discussion contained in STC's application is obviously relevant to that part of the Notice of Inquiry which concerns interim DBS systems. Therefore, we will place a copy of STC's application for an experimental authorization into the public record of this proceeding.

3. Now that an actual application for an experimental authorization has been filed, we believe that all interested persons who wish to do so should be given an opportunity to comment on the application as it relates to the questions raised in the NOI with regard to interim systems.

Accordingly, we are re-opening the period for filing comments and extending the date for filing replies on interim matters.[2] We caution, however, that at this time we are interested only in comments and replies on the portions of STC's application that are directly relevant to possible experimental authorizations.

4. With respect to the foregoing, we note that on December 5, 1980, STC filed comments in this proceeding stating that detailed support for its position on interim matters would be supplied in its forthcoming application. On December 12, 1980, CBS, Inc. filed a letter urging that the Commission reject the procedure proposed by STC in its December 5, 1980 comments. In the alternative, CBS requests that the Commission provide an adequate time period for replying to the matters relating to interim authorizations that are raised in STC's application. On December 15, 1980, STC filed a motion requesting an extension of time to January 16, 1981 for filing reply comments on matters relating to interim operations. In view of the actions taken by us to reopen the time period for filing comments and extend the time for filing reply comments on interim systems, CBS' alternative request is in effect granted, and STC's motion will be dismissed as moot.

5. Accordingly, it is ordered that:

(1) The application filed December 17, 1980, by Satellite Television Corporation for a Satellite-to-Home Subscription Television Service is hereby placed in the record of this proceeding;

(2) The date for filing comments related specifically to the authorization of interim DBS systems is re-opened to and including February 2, 1981, and the

[1] The Commission on its own motion extended the dates for filing comments and reply comments on interim matters to and including December 5, 1980 and December 22, 1980, respectively.

[2] We are also extending the dates for filing comments and replies on permanent regulatory policies.

date for filing reply comments is extended to and including February 17, 1981; and the dates for filing comments and reply comments related to permanent regulatory issues ARE EXTENDED to and including March 31, 1981 and May 29, 1981, respectively.

(3) The motion filed December 15, 1980 by Satellite Television Corporation for an extension of time in which to file reply comments is dismissed as moot.

6. 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 § 0.271 of the Commission's rules.

7. The Secretary shall cause this order to be published in the **Federal Register.**

Federal Communications Commission.

Douglas W. Webbink,

Deputy Chief, Office of Plans and Policy.

[FR Doc. 80-40315 Filed 12-23-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Ch. I

[Gen. Docket No. 80-741; FCC No. 80-697]

Inquiry Relating to Preparation for an International Telecommunication Union World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry.

SUMMARY: This proceeding requests public comment concerning the Commission preparations for International Telecommunication Union (ITU) World Administrative Radio Conference on the use of the Geostationary-Satellite Orbit and the planning of the space services utilizing it. This ITU conference will be held in two sessions in 1984 and 1985 and the U.S. as an ITU member will participate. This proceeding will serve as the basis for Commission coordination with the National Telecommunications and Information Administration (NTIA) and the Department of State (DOS) in the formulation of the United States proposals and policy for that conference.

DATES: Comments must be submitted on or before February 4, 1981. Reply comments are due on or before March 4, 1981.

ADDRESSES: Comments may be mailed to: The Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; or delivered to Room 222 between 8:00 a.m. and 5:30 p.m. Comments received may also be inspected in Room 222 between 8:00 a.m. and 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, International Staff, Room 7002, 202-653-8102.

In the matter of an inquiry relating to preparation for an International Telecommunication Union World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It.

Notice of Inquiry

Adopted: November 25, 1980;

Released: December 16, 1980.

By the Commission:

Purpose

1. The purpose of this proceeding is to request public comment concerning Commission preparations for a World Administrative Radio Conference on the use of the geostationary-satellite orbit and the planning of the space services utilizing it (Space WARC). This Conference will be held in two sessions in 1984 and in 1985. This proceeding will serve as the basis for Commission coordination with the National Telecommunications and Information Administration (NTIA) and the Department of State (DOS) in the formulation of the United States proposals and policy for that conference.

Introduction

2. The basic question before the Space WARC is not a new one: what means shall be employed for regulating access to a limited resource? This is a fundamental question often posed to regulatory agencies, domestic and international. In this case, the resource is the geostationary-satellite orbit/spectrum used for radiocommunication, and the international organization is the International Telecommunication Union.

3. Because the resource is limited and international cooperation is required for its effective use, regulation seems essential. The kind of regulation to be employed is the question. In approaching the matter, several frequently competing considerations exist that must be balanced. First, the regulatory framework should promote efficient use of the resource. Second, since the geostationary orbit/spectrum resource is limited for a given level of technology, the regulatory framework should ensure for all users equitable access to this resource as required. Third, the regulatory framework should promote innovation. As with most natural resources, advancements in technology constantly improve the utility of the orbit/spectrum resource, as well as increase the total amount of service that can be provided. Fourth, the regulatory framework should be as administratively simple as possible. This is particularly important in an international forum where applicants may need to interact with other nations in a complex technical and regulatory environment in order to effectively meet their requirements. Recause these considerations are often competing, a balance must be struck which is agreeable to the world community.

Background

4. The International Telecommunication Union (ITU), 1979 World Administrative Radio Conference (WARC-79), concluded in early December 1979. The WARC-79 agenda included (agenda item 2.10), *inter alia*, the requirement to propose to the ITU Administrative Council, and to the next ITU Plenipotentiary Conference, a program for convening future Administrative Radio Conferences to deal with specific services.[1] As one response to that agenda item, the WARC-79 adopted Recommendation No. 12 (XM).[2] It recommended to the Administrative Council, and, as appropriate, to the ITU Plenipotentiary Conference, to include in the program of future conferences a "World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit

[1] The agenda for the WARC-79 was contained in the *Report and Order* in Docket No. 20271, 70 FCC 2d 1193, FCC 78-849 (1978), p. A-2 and p. A-3. The FCC recommendations to DOS concerning future conferences were shown on p. A-385 of that *Report and Order.*

[2] ITU Radio Regulation provisions in this *Notice* are cited by the designations recently announced by the ITU. For convenience of the reader, the WARC-79 temporary number, followed by a slant bar and previous designation, if any, are also provided within parentheses, for example, Article 8 (N7/5).

and the Planning of Space Services Utilizing it." The 35th Sesion of the ITU Administrative Council held in May 1980 considered this recommendation in the scheduling of future conferences and has scheduled the first session of the Space WARC for six weeks beginning March 12, 1984.[3] The second session of this conference was also scheduled for six weeks beginning in November of 1985. The specific agenda for each of these sessions was not established at that May meeting. However, it is expected that the agenda for this conference will be considered at the 1981 session of the Administrative Council. Comments on the agenda received in this proceeding will aid in the development of U.S. positions for the Administrative Council meeting.

5. Resolution No. 3 (BP), as adopted by WARC–79, establishes the mandate for the Space WARC and provides guidance with respect to the agenda for the Conference. This Resolution (included in Appendix 1 of this *Notice*) resolves that ". . . a World Administrative Radio Conference shall be convened not later than 1984 to guarantee in practice for all countries equitable access to the geostationary-satellite orbit and the frequency bands allocated to space services." To achieve the objective of assuring equitable access Resolution No. 3 (BP) provides for the consideration of three basic approaches. Resolution No. 3 (BP) envisions that the first session of the conference will:

A. Decide which space services and frequency bands—if any in the U.S. view—should be planned. This first session is also to establish the principles, technical parameters and criteria for planning taking into account the relevant technical aspects concerning the geographical situation of particular countries, and to provide guidelines for regulatory procedures associated with planning;

B. Establish guidelines for regulatory procedures for those services and frequency bands where planning is not appropriate; and

C. Consider other possible approaches that will accomplish the objective of guaranteeing equitable access in practice for all countries to the geostationary-satellite orbit/frequency resource.

A second session of the conference is to implement the decisions of the first session. Consideration of the three approaches outlined above are treated more fully in the following sections of this Notice.

6. It is clear from Resolution No. 3 (BP) that the Space WARC should be competent to consider those space services that use the geostationary-satellite orbit in all the appropriately allocated frequency bands according to Article 8 (N7/5) of the Final Acts of WARC–79. This, of course, would exclude those services and uses which have satellite orbits other than the geostationary-satellite orbit.[4] Although not specifically stated within Resolution No. 3 (BP), the Space WARC is not expected to consider the planning of the broadcasting-satellite service in the 11.7–12.7 GHz band nor its associated feeder link frequency bands for Region 2. Another ITU administrative radio conference will be convened to consider these matters.[5] Also, the 1982 WARC for Mobile Telecommunications is expected to address certain operational and technical aspects for the maritime mobile-satellite service and matters related to distress and safety.[6] Consequently, these specific items should be decided by this Mobile WARC and may not be considered by the Space WARC. Additionally, it is not expected that this conference will be competent to make modifications to the Table of Frequency Allocations. Finally, we would like to point out that while this conference will be primarily concerned with the treatment of space sevices, nearly every space service frequency band is shared to some extent with terrestrial radio communication services. The Space conference will necessarily have to take cognizance of these terrestrial services such that their continued viable operation is not jeopardized.

[3] ITU Circular Telegram A271, May 22, 1980.

[4] The geostationary-satellite orbit is defined in Radio Regulation No. 3133A of the Final Acts of WARC–79.

[5] Resolution No. 701 (CH/Sat–8, Sat–9) adopted at WARC–79 calls for the convening of a Region 2 Broadcasting-Satellite Conference for planning the band 12.3–12.7 GHz for the broadcasting-satellite service, and in that portion of the band 12.1–12.3 GHz that it shall allocate to the broadcasting-satellite service. It shall also plan the feeder links in a part of the 17.3–18.1 GHz allocated to the fixed-satellite service ". . . of a bandwidth equal to the total bandwidth allocated to the broadcasting satellite service, for the downlink in the 12 GHz band." The *Notice of Inquiry*, General Docket No. 80–398, FCC 80–417, released July 25, 1980 addresses the Commission's preparations for this Conference. The ITU World Administrative Radio Conference for the Planning of the Broadcasting-Satellite Service (WARC–BS) 1977 planned the bands 11.7–12.2 GHz for Region 3 and the band 11.7–12.5 GHz for Region 1. The Plan is contained in Appendix 30(29A) to the Final Acts of WARC–79. The 35th Session of the Administrative Council (May 1980) has scheduled the Region 2 Broadcasting-Satellite Conference for five weeks beginning June 13, 1983.

[6] A *Notice of Inquiry*, General Docket No. 80–184, FCC 80–232, (1980), 45 Fed. Reg. 35418 released May 15, 1980, addresses the Commission's preparations for this Conference. An *Order*, FCC 32267, extending time for comments and reply comments, was released June 6, 1980.

The Use of the Geostationary-Satellite Orbit

7. The Administrative Radio Conference, Geneva, 1959 was the first ITU Conference to recognize space radio communications and it provided allocations for this purpose. The basic philosophy of the current regulatory procedures of the Radio Regulations (Articles 11 (N11/9A) and 13 (N13/9A) of the Final Acts of WARC–79) concerning the advance publication, coordination and notification of space radio communications was initially established at the Extraordinary Administrative Radio Conference, Geneva, 1963. The procedures were subsequently elaborated by the World Administrative Radio Conference for Space Telecommunications, Geneva, 1971 and by WARC–79.

8. The basis for the forthcoming Space WARC stems from principles established at previous ITU Administrative Radio Conferences and the ITU Convention. Article 33 of the ITU Convention states: "In using frequency bands for space radio services, Members shall bear in mind that radio frequencies and the geostationary-satellite orbit are limited natural resources, and that they must be used effectively and economically so that countries or groups of countries may have equitable access to both in conformity with the provisions of the Radio Regulations according to their needs and the technical facilities at their disposal." Recommendation No. 700 (XC/Spa10) adopted by WARC–79 recognizes ". . . that all Members of the International Telecommunication Union have an interest in and a right to an equitable and rational use of frequency bands allocated to space radio communications." It recommends ". . . that the utilization and the exploitation of the frequency bands allocated to space radio communications be subject to international agreements based on principles of justice and equity permitting the use and sharing of these bands in the mutual interest of all nations." This principle is further effected by Resolution No. 2 (AY/Spa2–1) which resolves ". . . that the registration with the IFRB of frequency assignments for space radio communication services and their use should not provide any permanent priority for any individual country or groups of countries and should not create an obstacle to the establishment of space systems by other countries." This Resolution further states that those countries that have registered space radio communications systems with the

IFRB ". . . should take all practicable measures to realize the possibility of the use of new space systems by other countries or groups of countries so desiring." To date, these principles have been followed through the use of the advance publication, coordination and notification procedures of Articles 11 (N11/9A) and 13 (N13/9A).

9. Since the adoption of these principles and the associated regulatory procedures, many countries have implemented space radiocommunications systems in the geostationary-satellite orbit. Recently, some countries desiring to obtain orbital positions in certain frequency bands, such as the 4/6 GHz fixed-satellite service bands, have found the coordination and notification requirements somewhat more difficult to complete than those countries who implemented systems earlier. In fact, during the deliberations of WARC–79, some countries argued that the current regulatory procedures might be inherently inequitable and that some other arrangements should be pursued to rectify the situation. Although the regulatory procedures relating to space services were retained by WARC–79 in essentially the same form, they were strongly criticized by developing countries, some of whom favored the adoption of formal plans to govern the implementation of space services. This issue was intensely debated during the 1979 Conference and led to the adoption of Resolution No. 3 (BP). One of the intents of this Resolution, then, is to have the Space WARC review the effectiveness, efficiency and ease of the current regulatory procedures and their ability to guarantee equitable access for all countries to the geostationary-satellite orbit in all bands allocated to space services. In response, the U.S. delegation to WARC–79 introduced a statement on this Resolution (Appendix 2 to this *Notice*) explaining the U.S. interpretation of "planning" and the scope of the Space WARC.[7]

10. To date, the U.S. posture has been that the current coordination and notification procedures within the Radio Regulations are adequate and effective (no administration has ever been denied access to the geostationary-satellite orbit), and that these regulations should be continued in their WARC–79 modified form. These Radio Regulations are consistent with U.S. policy on space radiocommunication. That policy recognizes space communications as a relatively new means of telecommunications that is changing and improving very rapidly through advances in technology; so much so, that it is not beneficial to any country to inhibit this communication field with cumbersome administrative and regulatory procedures based upon outmoded technical parameters.[8] The current regulatory framework permits the maximum flexibility in developing and utilizing space telecommunications. It has provided a means of enhancing the use of the geostationary-satellite orbit by resolving the difficulties of interference between satellite networks through the coordination mechanism. This facet of the present procedure might be lost in any rigid planning approach.

11. There is a significant difference between the U.S. posture on this subject and the desire to carry out detailed planning as expressed by some countries in developing Resolution No. 3 (BP). In order to reconcile this difference, the U.S. preparation should examine ways and means of developing procedures which satisfy the equity considerations as well as enhance the continued growth of space technology. One of the more critical issues to be faced at the Space WARC will be the policy and principles for the use of the geostationary-satellite orbit. In this regard, comments are requested as to the U.S. policy that should be pursued with respect to all internationally defined space radiocommunications services and their use of the geostationary-satellite orbit. Should the U.S. pursue its current policy on the use of this resource, recognizing that there will be considerable opposition to it at the Space WARC? If not, what alternative policy approaches should be pursued and what are the advantages and disadvantages of each? In light of this U.S. policy, comments are requested as to the U.S. objectives that should be pursued at the Conference. The need to provide for equitable use and enhanced technology should be kept in mind. The topics may be discussed in a general sense but, if possible, comments should also be framed and directed toward specific ITU defined radio services and frequency bands, as appropriate.

Plans and Other Approaches [9]

12. Resolution No. 3 (BP) recognizes planning as a specific technique for guaranteeing equitable access for all countries to the geostationary-satellite orbit/frequency spectrum. It also specified that the Space WARC shall consider other possible approaches that could meet this objective. Resolution No. 3 (BP) does not indicate the appropriateness of any specific type of plan for any space service or any frequency band. To date, the current regulatory provisions and the detailed frequency/orbit plan of the Broadcasting-Satellite WARC, 1977 are the only approaches to the use of the geostationary-satellite orbit that have been adopted. In order that the U.S. be adequately prepared for the Space WARC, it is important that all possible approaches to the use of this resource be explored and considered. In this connection the Interim Working Party 4/1 of the CCIR is examining several alternative approaches for ensuring equitable access to the geostationary satellite orbit/frequency resource. An excerpt from the May 1980 report of this IWP that addresses these approaches is attached as Appendix 3. Comments on these approaches are requested, specifically with regard to the questions posed in paragraph 13 below.

13. There are several issues related to the concepts of planning and the use of other approaches that should be examined during this preparatory effort. These issues are elaborated within the following questions.

A. Since the basic principle for any plan or other approach is to assure a guarantee of equitable access, what plans or other approaches can be developed to satisfy the objective of guaranteeing equitable access, in practice, for all countries to the geostationary-satellite orbit? [10] How does the particular plan or other approach provide this guarantee for all countries? Comments should describe the suggested plan or other approach and explain in sufficient detail how it works so as to facilitate and appropriate assessment of the suggestion.

B. Because of particular features of space operations, some space services in certain frequency bands may not be

[7] Summary Record of Part Two of the Tenth Meeting of Committee 6 (Regulatory Procedures), WARC–79, Doc. No. 846 (26 November 1979) at Annex 1, p. 6–7.

[8] As an example, the 1977 WARC–BS plan for Regions 1 and 3 adopted satellite spacings of 6°. Deviation from this spacing can occur only with severe penalties. These regulatory procedures do not permit any variations in the satellite spacings in the plan in order to increase orbit capacity due to improvements in technical characteristics during the minimum 15 year lifetime of the plan.

[9] The term "other approach" as used in this *Notice* refers to any approach that would satisfy the concept of guaranteeing equitable access to the geostationary-satellite orbit as indicated in Resolves 3.4 of Resolution No. 3 (BP).

[10] The International Radio Consultative Committee(CCIR) is also studying the technical aspects of various plans and coordination methods. These are contained in the Report of the Ninth Meeting of CCIR Study Group 4, Interim Working Party 4/1 (IWP 4/1), Paris, 5–9 May 1980, section 3, p. 5.

amenable to planning of any kind, while some other space services in other frequency bands may more suitably use one approach over another. For which space services and which frequency bands, if any, is a particular type of plan or other approach applicable?

C. How would the opertions of international organizations, such as Intelsat, Arabsat, Intersputnik and Inmarsat, be incorporated into any plan or other approach?

D. What criteria should be used to evaluate a particular plan or other approach? [11] One criterion is how the particular plan would accommodate the existing requirements of administrations. What others should be used?

E. Timing considerations are integral to any plan or other approach. When should any plan or other approach be implemented? Considering that some countries wish to guarantee their access to the orbit for some time in the future, over what interval of time should any plan or other approach be effective?

F. Many of the space services share, on an equal basis, frequency bands with other space or terrestrial services. Comments are requested on how these other shared services would be impacted and how they should be considered in the development of any plan or other approach.

G. Space radio communications is a relatively new telecommunications technology with unforeseen service requirements. How would technological advances and new or unforeseen service requirements be incorporated into any plan or other approach?

Service Requirements

14. In order to understand the implications of any plan or other approach on any space service that is or may be used by the U.S., it is necessary to determine the requirements of each space service as it is used by the U.S. We request specific comments in this regard. These requirements should be described within the following time context. What is needed for the existing systems? What is planned in the immediate future, that is, in the next five years? What are the long term trends for the service? The basic requirements of a space service should be expressed in the following terms.

Frequency Bands

15. Some space services operate entirely within frequency bands allocated to them in order to provide the intended communication operations. Some space services have need for spectrum allocated to other space services. For example, the maritime mobile-satellite service requires spectrum in the fixed-satellite service in order to meet feeder link requirements. [12] Comments are requested as to the amount of spectrum needed for each space service in addition to that spectrum allocated for the specific service. Comments should indicate the other space service involved, the frequency band of concern, the amount of spectrum required and the relationship to the original space service. For example, the maritime mobile-satellite service operating at 1626.5–1645.5 MHz may need, as a feeder link a comparable 19 MHz of spectrum in a fixed-satellite service allocation, such as the 4 GHz band.

Service Area

16. Each space service has different service area requirements. Some space services operate with earth stations on a global basis, as in the maritime mobile-satellite service. Other services have service area requirements that are limited to specific countries or regions. Finally, other services such as the fixed-satellite service have both service area requirements. Comments are requested on the service area requirements of each space service in each frequency band.

Orbital Locations and Bandwidth Requirements

17. In order to be able to discuss the bandwidth that a specific service requires, one must determine the types and the numbers of uses that the service will provide. Requirements for telephone differ from requirements for video or data transmission. Comments are specifically requested on the types of uses that a service provides, the number of channels/transponder and the channel or transponder bandwidths needed for each use.

18. Each service has its own requirements for orbital locations according to types of operation. An international maritime mobile-satellite operation requires a number of orbital locations on the geostationary-satellite orbit in order to provide global coverage. The broadcasting-satellite service, on the other hand, may need only one location to provide the local coverage operation for a particular country. The fixed-satellite service, however, provides both types of coverage. Domestic coverage may be provided within the service from a single orbital position or a number of orbital positions depending upon the traffic requirements and the types of uses being provided within a country; also international connection requirements need a number of orbital locations to provide satisfactory operations.

19. The key to determining the number of orbital locations that the U.S. needs is dependent upon the total bandwidth/transponder requirements. It must be determined if an operation can be provided from one orbital location or if it is possible to provide the same service from two or more locations. Does a service require more than one orbital location in order to fulfill the basic requirements of the U.S.? If it is possible to spread the total bandwidth requirement over a number of satellite positions, is there a minimum bandwidth or number of transponders which should be provided to a given service area from a given satellite position, considering both service requirements and system costs? Based upon the above considerations, comments are requested on the number and location of orbital positions needed for a particular space service in the United States. Comments are also requested on the minimum or preferred orbital spacing between systems operating in the same frequency band.

Technical Specifications and Sharing Criteria

20. The United States position on the technical issues will be strongly influenced by what the U.S. perceives as the basic service requirements for each space service in each frequency band. For example, the actual number of available transponders or channels will be dependent upon particular technical parameters selected, that is, the frequency re-use techniques, coverage areas, earth station and space station equipment characteristics, protection ratios and the like. Comments are specifically requested on the technical parameters for each service. Can frequency re-use techniques be employed within a service; if so, what are they and how should they be employed? (Some examples are polarization discrimination, scanning beam techniques, spot beams, etc.) Other technical parameters requiring consideration are the power flux densities and e.i.r.p. from the space stations; the minimum elevation angles required for the service; the modulation types; the necessary bandwidth, and the channel widths, including guard bands for each service; the required carrier to noise ratios for the desired quality of service; channel spacings; the figure of

[11] See, e.g., *id.* at p. 6. The IWP 4/1 report formulated six evaluation criteria.

[12] The definition of feeder link is given in Radio Regulation No. 3094A of the Final Acts of WARC-79.

merit for the receiving stations for both the space and the earth stations; the size of the antennas; and the antenna radiation patterns. Comments on these and other appropriate technical parameters are requested.

21. Interference criteria is integral to having compatible operations for space services in any plan or other approach. Also, many space services share, on an equal basis, frequency bands allocated with other space and terrestrial services. In order to provide compatible operations within a space service, as well as between services, interference and sharing criteria must be established. WARC–79 adopted several Resolutions and Recommendations which address the question of sharing and the calculation of interference within and between space services.[13] Some interference and sharing criteria that are needed are: interference allowances as a proportion of the total noise budget, single interference entry criterion versus total interference in a satellite radio system, protection ratios between services for the different modulations for each service, antenna radiation patterns with sidelobe performance and polarization discriminatoin characteristics, especially for satellite antennas, interference resistant modulation techniques, etc. Comments are solicited on interference and sharing criteria needed to provide compatible operations within a space service as well as between different services sharing the same frequency band.

22. Resolution No. 3 (BP) invites the International Radio Consultative Committee (CCIR) to carry out preparatory studies to provide the first session of the Conference with technical information concerning principles, criteria, and technical parameters, including those for planning space services. The CCIR has already begun this effort in Interim Working Party (IWP) 4/1 which has been established as the coordinating body within CCIR to develop the required report for the first sesson of the Space WARC.[14] In addition, the IFRB is also to carry out technical preparations for the Conference in accordance with the provisions of the Radio Regulations.

Regulatory Procedures

23. Resolution No. 3 (BP) specifies two areas where it will be necessary to have regulatory procedures. Resolves 3.2 indicates that the first sesson of the Conference is to provide guidelines for regulatory procedures associated with various plans. Resolves 3.3 states that the first session should establish guidelines for regulatory procedures for those services and frequency bands that are not to be planned.

24. Since the Space WARC may decide not to plan certain frequency bands and space services, regulatory procedures will be required in order to facilitate the use of these bands. Comments are requested on the adequacy of the current regulations under Articles 11 (N11/9A), 12 (N12/9), and 13 (N13/9A), and the associated Appendices 1 (1), 3(1A), 4(1B), 28(28) and 29 (29). Are there any modifications to these regulations that will be necessary in the future? Are there ways to improve these regulatory procedures? Can they be simplified? Are there other regulatory procedures that should be developed?

25. With respect to any plan or other approach, implementing resolutions and regulatory procedures will be necessary for its proper use. Some regulatory procedures of the current Radio Regulations may have some utility with respect to a particular plan or other approach. One area for consideration for regulatory procedures is a method to update a plan or other approach in order to take into account changing requirements of a country or future advances in technology. The extreme difficulty of such an updating method has been one of the criticisms of the plan (Article 4) developed for the broadcasting-satellite service at WARC–BS 1977. As another example for consideration, Article No. 16 (N14/9B) of the Final Acts of WARC–79 has provisions that specify that a country loses its right to its designated frequency allotment obtained through the coordination procedures of the Article, if the administration does not implement the use of frequency within a specified time interval.[15] Are procedures of this nature with respect to orbital positions and frequency channels also applicable within the context of the Space WARC? Comments on appropriate regulatory procedures that would meet these objectives are requested. Are there other areas that should be included within the regulatory procedures? If so, what are they? What implementation procedures should be provided for any specific plan or other approach?

26. Resolution No. 4 (BY) as adopted by WARC–79, addresses the period of validity of frequency assignments to space stations using the geostationary-satellite orbit. It specifically invites the Space WARC to take cognizance of the initial results of the application of this Resolution. Comments are requested on this Resolution as it is applicable to the Space WARC.

Future Technology

27. The adoption of a frequency/orbit location plan like the 1977 Broadcasting Satellite plan for a specific service may freeze technology to that point in time when the plan was established.[16] This would deny the very increases in orbit-spectrum capacity and decreases in cost required for the continued efficient and economical use of this limited resource. Each plan or other approach that is discussed should be developed in a way so that it will be able to accommodate future technology. This is essential to the acceptance of any plan. In order to be prepared for the Conference, comments are specifically requested on the possible advances in technology that will affect the space communications area in the near term and in the long term, particularly as they apply to the efficiency of use of the orbit/frequency spectrum and the future cost of communications systems.

Other Related Matters

28. WARC–79 adopted several Resolutions and Recommendations that may be considered by the Space WARC. Resolution 505 (CM) is concerned with the broadcasting-satellite service (sound) in the frequency range 0.5–2 GHz. This resolution empowers the next WARC dealing with space radiocommunication services to consider the results of various studies and to allocate a suitable frequency band for the sound broadcasting satellite service. The conference would also develop appropriate procedures for protection, and, if necessary, reaccommodation in other bands, of assignments of terrestrial services which may be affected. One specific suggested band in the Resolution for allocation to this service is 1429–1525 MHz. Is that band suitable for this service? If not, what is the justification and what other

[13] Resolution Nos. 703 (CW) and 60 (AJ) and Recommendation Nos. 707 (YV), 706 (YW), 711 (Z), 102 (X), 64 (R), 68 (E), 61 (ZB) and 708 (ZQ) address questions of sharing between services and the calculation of interference for coordination purposes between services.

[14] Report of Ninth Meeting of CCIR Study Group 4, IWP 4/1.

[15] These provisions (Radio Regulation No. 4774/639EV) were established for the maritime mobile service at the World Maritime Administrative Radio Conference, Geneva, 1974.

[16] The WARC–BS plan for Regions 1 and 3, for example, have satellite spacings based upon conservative antenna performance characteristics. Since 1977, shaped beam technology and improved sidelobe performance characteristics have been incorporated into antenna radiation design. Both of these factors greatly affect satellite spacings and the number of available channels in the plan.

bands, if any, would be suitable? Are there any requirements for this service in the U.S.? If so, what are they? What are appropriate technical characteristics and sharing criteria for this service? With respect to this latter point, Recommendation No. 705 (T/Spa2–10) concerning frequency sharing between the broadcasting/satellite service and broadcasting services at 620–790 MHz should be considered.

29. Several other Resolutions and Recommendations address broadcasting-satellite service matters aside from those to be considered at the Region 2 1983 Broadcasting-Satellite Conference, and may also be considered at this Space WARC.[17] Two of these Resolutions are concerned with the establishment of conferences for planning. Resolution No. 101 (BQ) deals with the planning of feeder links to the broadcasting-satellite service at 12 GHz for Regions 1 and 3. Resolution No. 34 (CL) relates to the planning of the broadcasting-satellite service in the 12.5–12.75 GHz band in Region 3. Since the ITU Administrative Council has, as yet, not set aside specific dates for separate conferences on these matters, they may be considered at the Space WARC.

30. Three other Recommendations treat allocation questions with respect to space services and may be considered at the Space WARC. Recommendation No. 710 (N) is concerned with the use of airborne radars in the frequency bands shared between the inter-satellite service and the radiolocation service. Recommendation No. 709 (O) is concerned with frequency bands shared between the aeronautical mobile service and the inter-satellite service. Lastly, Recommendation No. 100 (YX) is concerned with the preferred frequency bands for systems using tropospheric scatter and the relationship with the space services.

31. One Resolution and several Recommendations, although not directly related to planning or allocation matters, do have a bearing on the space services.[18] They are concerned with technical characteristics of equipment for space services, coordination procedures for specific services, and transportable earth stations and definitions necessary for planning space services. Since the agenda for the Space WARC has not been established, the above matters may be considered at that Conference. Therefore, we raise these matters and request comments on their applicability to the Space WARC and their possible inclusion in the agenda for that Conference.

Need for an Advisory Committee

32. During the preparations for some previous ITU administrative radio conferences, joint industry/government advisory committees were established to assist in the United States preparations.[19] Some of this work for the Space WARC has already begun within the United States Study Groups of the CCIR (an Advisory Committee under the auspices of Department of State) as a result of the various Resolutions and Recommendations adopted at WARC–79. The Commission, however, requests comments on the desirability of forming an advisory committee to assist in preparations for the Space WARC. Comments are specifically requested to address the cost/benefits of such an action (e.g. advisory committee vs. contracted studies). If the formation of an Advisory Committee is deemed desirable or cost beneficial to the Commission, what should be the terms of reference and the composition of such a committee? These comments should bear in mind the provisions of the Federal Advisory Committee Act of 1972 and in particular FCC INST 1126.1 concerning Federal Advisory Committee Management.[20]

Administrative

33. Although the subject conference is not scheduled to convene its first Session until March 1984, the issues involved are important, complex and controversial. It is essential that the Commission and the U.S. begin formal preparations for this conference. Accordingly, pursuant to the authority contained in Section 4(i), 303 and 403 of the Communications Act of 1934, as amended, a *Notice of Inquiry* is adopted in the matter captioned above.

34. Interested parties may file comments on or before February 4, 1981 and reply comments on or before March 4, 1981. Although Section 1.419 of the Commission's Rules requires that an original and five copies of all statements, briefs or comments be filed in response to this *Notice*, the Commission's conference preparatory activities would be facilitated by the filing of an original and nineteen copies. All relevant and timely comments and reply comments filed in this proceeding will be considered. The Commission may also take into account other information before it, in addition to the specific comments and reply comments elicited by this *Notice of Inquiry*.

35. Point of contact on this matter is Mr. Thomas S. Tycz, International Staff, Office of Science and Technology, (202) 653–8102.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix 1

RESBP–1

Resolution BP

Relating to the Use of the Geostationary-Satellite Orbit and to the Planning of Space Services Utilizing it

The World Administrative Radio Conference, Geneva, 1979.

Considering

(*a*) that the geostationary-satellite orbit and the radio frequency spectrum are limited natural resources and are utilized by space services;

(*b*) that there is a need for equitable access to, and efficient and economical use of, these resources by all countries as provided for in Article 33 of the International Telecommunication Convention, Malage-Torremolinos, 1973, and Resolution AY;

(*c*) that the utilization of radio frequencies and the geostationary-satellite orbit by individual countries and groups of countries can take place at various points in time, based on their requirements and the availability of the resources at their disposal;

(*d*) that there are growing requirements all over the world for orbital position and frequency assignments for the space services;

(*e*) that in the use of the geostationary-satellite orbit for space services, attention should be given to the relevant technical aspects concerning the special geographical situation of particular countries;

Resolves

1. that a World Administrative Radio Conference shall be convened not later than 1984 to guarantee in practice for all countries equitable access to the geostationary-satellite orbit and the frequency bands allocated to space services;

2. that this Conference shall be held in two sessions;

3. that the first session shall

3.1 decide which space services and frequency bands should be planned;

3.2 establish the principles, technical parameters and criteria for the planning, including those for orbit and frequency assignments of the space services and frequency bands identified as per 3.1, taking into account the relevant technical aspects concerning the special geographical situation

[17] Resolution Nos. 507 (Au/Spa2–2), 33 (BO/Spa2–3) 101 (BQ), 34 (CL), 102 (CS) and Recommendation Nos. 101 (ZE/Sat–5), 712 (U/Sat–7), 506 (ZC/Sat–2) and 508 (ZD/Sat–4).

[18] Resolution No. 642 (BV), and Recommendations Nos. 70 (S/6), 405 (Y/Aer–2), 67 (YH), 313 (YR/Mar2–15), and 1 (XE/Spa2–13).

[19] A joint Industry/Government Advisory Committee was established to assist in the U.S. preparations for the 1977 WARC–BS. During the U.S. preparations for WARC–79, several industry advisory committees were also established to represent the different radio services.

[20] Federal Advisory Committee Act, Pub. L. 92–463, October 6, 1972, 86 Stat. 770, as amended Pub. L. 94–409, sec. 5(c), September 13, 1976, 90 Stat. 1247 at sec. 3(c) [the Act appears at 5 U.S.C. App. I (1976)].

of particular countries; and provide guidelines for associated regulatory procedures;

RESBP–2

3.3 establish guidelines for regulatory procedures in respect of services and frequency bands not covered by 3.2;

3.4 consider other possible approaches that could meet the objective of *resolves* 1;

4. that the second session shall be held not sooner than twelve months and not later than eighteen months after the first session and implement the decisions taken at the first session;

Invites

1. *the CCIR* to carry out preparatory studies and provide the first session of the Conference with technical information concerning principles, criteria and technical parameters including those required for planning space services;

2. *the IFRB* to prepare a report on the operation of the procedures of Articles N11 and N13 including information about difficulties which may be reported to the IFRB by administrations in gaining access to suitable orbital locations and frequencies, and to circulate this report to administrations at least one year before the first session of the Conference;

3. *the IFRB* to carry out technical preparations for the Conference in accordance with the provisions of the Radio Regulations;

4. *the administrations* to examine all aspects of the matter with a view to submitting proposals to the Conference, and to cooperate actively in the above-mentioned work of the CCIR and IFRB;

5. *the Administrative Council* to take all necessary steps for the convening of the Conference in accordance with this Resolution.

Appendix 2

WARC—79 U.S.A. Delegation Statement

Concerning Resolution BP *

"The United States, in a spirit of compromise, can accept in general the proposed Resolution relating to the use of the geostationary satellite orbit and the space services using it. We believe that the text of the Resolution could have been further improved in several respects, but we recognize that it represents the result of lengthy discussion and reflects a sincere effort by all parties to accommodate diverse views."

"The United States accepts the idea of a future space conference—the third since 1963—as being in keeping with the dynamic development and utilization of space communication technology. As stated many times in earlier discussions, the United States is of the view that the existing Radio Regulations are responsive to the spirit of Article 33 of the Convention and Resolution No. Spa2–1 of the Radio Regulations and have provided an effective mechanism for those administrations whose space services require access to the geostationary satellite orbit and the radio spectrum."

"However, we also recognize that the Radio Regulations have been criticized by some administrations, and we believe that there is always room for improvement based on experience with the actual application of the Regulations. Indeed, improvements to the Regulations have been undertaken at this Conference and undoubtedly further improvements will be found at the next Space Conference, since that Conference will have as one of its major mandates the establishment of improved regulatory procedures."

"There has been extensive discussion over the nature of the planning to be undertaken at the next Space Conference, and various explanations have been given as to what is intended. For its part, the United States views the planning mandate of the next Space Conference as being very wide in scope, admitting of a broad range of possibilities ranging from detailed orbit/frequency assignment plans to more dynamic planning approaches that will provide access to the orbit/spectrum in an equitable manner as the real requirements of administrations arise. While we are of the view that a flexible and dynamic planning approach will be more responsive to user needs, we believe that the Conference will be free to decide for itself the best approach for ensuring equitable access to the orbit/spectrum based upon careful and comprehensive technical preparations and analysis. In this regard, the full and active support of the CCIR will be indispensable."

"In deciding on the best planning approach, we trust that the future Space Conference will recall the grave problems foreseen by the United States, and also by a number of the countries who favored planning for the broadcasting-satellite service in 1977, if 1977 WARC-type planning were to be applied to the fixed-satellite service. I shall briefly summarize these difficulties for the record."

"Accommodation of long range requirements predictions with near-term technology"

"A detailed orbit-frequency assignment plan would have to try to use proven, near-term technology to accommodate the sum-total of the long-range future requirements of all countries and groups of countries that might possibly want to operate satellite systems. Although the United States is certain that technological advances can expand orbit-spectrum capacity to accommodate all foreseeable real requirements as they arise, we acknowledge that 1984 technology will not be able to accommodate the grand total of 1999 requirements that a planning conference would face."

"Freezing of technology"

"A 1977 WARC-type plan would freeze technology which, contrary to some assertions, is still in a state of rapid improvement in the 4/6 GHz as well as other bands. This would deny the very increases in orbit-spectrum capacity and decreases in cost required for continued efficient and economical use of these limited resources that Article 33 tells us are essential for equitable access."

"Inhomogeneity"

"Individual fixed-satellite systems vary greatly in their characteristics. This inhomogeneity is intrinsic to fixed-satellite networks. Such systems must accommodate in an economic and dynamic fashion a wide variety of numbers and types of channels, even within a single national system. This is why fixed-satellite planning is radically different from and much more complex than the broadcasting-satellite planning of 1977 which was based on the assumption of completely homogeneous system."

"Unused orbit/spectrum resources"

"Many assignments in a plan will come into use late in the life of the plan, if at all, either because terrestrial techniques will be more economical, or because national requirements may be met more economically by participation in an international or regional system. It is not accurate to say that assignments made to certain countries, which cannot be used for some time, will be made available to other countries. A plan necessarily ties a particular orbital position and frequency assignments to a specific coverage or service area. The interlocking nature of a plan would make it practically impossible for other countries to make use of unused assignments."

"Inflexibility"

"The inflexibility of a detailed plan also makes it difficult if not impossible to modify a plan to provide assignments for new countries, or for new regional groupings of countries wishing to establish a shared system. Revision of a plan, if it is to be meaningful, will involve massive changes; it will necessarily be a complex, expensive and time-consuming process; it will need to balance the desire of then-existing systems to keep on operating against the possibility of cancelling assignments for the sake of a new plan. We believe that such substantial revision of a plan will be impractical, technically and economically. Thus, a plan will tend to institute, de facto, a permanent or semi-permanent priority, contrary to the principles stated in Resolution No. Spa2–1."

"For all of these reasons, the United States holds that the words "planned" and "planning" in the draft Resolution must be interpreted in a broad and flexible sense. With this interpretation of planning and with the obligation to consider a variety of altenative approaches to the use of the orbit-spectrum resource by space services, the next Space Conference can lead to the full realization of the objective of equitable access to the resource that the United States has always supported."

Appendix 3

[Temp. Doc. No. 4 (Rev. 1)]

Draft Element for Report

Methods for Ensuring Equitable Access for all Countries to the Geostationary Satellite Orbit and the Frequency Bands Allocated to Space Radiocommunication Services

The potential capacity of the geostationary satellite orbit and the radio spectrum for the various space radiocommunication services is very large but if all countries are to have

*Summary Record of Part Two of the Tenth Meeting of Committee 6 (Regulatory Procedures), WARC–79, Doc. No. 846 (26 Nov. 1979) at Annex 1, p. 6–7.

access to it when they need it and to a sufficient degree, it is necessary:

For efficient methods to be used to plan or coordinate the use of orbit and spectrum, and

For improvements in the technical means of using the orbit and the spectrum to be applied progressively, as the means are developed and the requirements grow.

In this section various possible planning and coordination methods are identified for evaluation, recognising that different approaches may be appropriate for different services and for different frequency bands.

The following planning and coordination methods have been identified so far for study:

1. A long-term frequency/orbit-slot allotment plan, drawn up by a planning conference in the pattern of the 1977 Satellite Broadcasting WARC; the plan might be revised after 20 years.

2. A generalized allotment plan might be devised for an orbital arc and a geographical region, permitting orbit/spectrum to be assigned when required to networks within that region without significant interaction with the networks operating elsewhere.

3. Periodic planning conferences, held every 3 to 5 years might consider existing networks and all other networks for which advance notification had been made under Appendix 1B of the Radio Regulations. These conferences would draw up optimised frequency/orbit-slot allotment plans.

4. An orbit/spectrum allotment plan might be drawn up with built in flexibility, it being understood that a broad plan might be adopted which would permit sub-allotment of orbital slots over time, based on changes in requirements and technology, subject to appropriate safeguards for other allotments.

5. Bilateral coordination procedures would be used where feasible. However if these bilateral coordination procedures proved unsuccessful in the coordination of an additional network, then all the administrations involved would be required to collaborate in a special meeting under the auspices of the IFRB and to find a way to provide access to the orbit for the new network.

6. Existing procedures under Radio Regulations Articles N11, N13, and N27, Appendices 1A, 1B and 29 and supporting CCIR texts such as Recommendations 466–2, 483–1, 523 and 524 might be developed further to increase the opportunities for changing the location of existing satellites or their frequency plans or emission parameters to ensure that new networks will be accommodated.

It should be noted that these various methods may not be mutually exclusive: one method may be best for one service, for one frequency band, for one arc of the geostationary satellite orbit or for one geographical area but another method may be preferred under other conditions.

In addition to methods such as these, it is recognised that some aspects of the administration of the use of radio frequencies for certain space radio services might be carried out by a specialised agency with international responsibilities for such a service.

In evaluating these various methods, it will be necessary to identify the technical advantages and disadvantages that may be expected to arise with them. As an aid in this process, the following criteria have been drawn up:

A. Does the method ensure that the forecast of traffic requirements used in planning or coordination will be reliable?

B. Will it be possible to accommodate changes in traffic requirements after the process of planning or coordination has been completed?

C. Do they ensure that realistic assumptions on feasible improvements in technology and reductions in the cost of the application of that technology are taken into account in planning?

D. Do they ensure that the owners of networks and the prospective owners of new networks will have an appropriate incentive to apply optimum technical standards? Optimum technical standards would be those that achieve the objectives of their network at least cost, giving proper regard to the needs of other networks which exist or whose entry into service during the service lifetime of the equipment can be foreseen with sufficient confidence?

E. Do they assure access for new and unforeseen networks?

F. Will they accommodate unforeseen applications or parameters?

G. Is their implementation likely to be costly, laborious, or to demand too much technical expertise?

[FR Doc. 80–40292 Filed 12–23–80; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039, 1090, and 1300

[Ex Parte No. 230 (Sub-No. 5)]

Improvement of Trailer on Flatcar and Container on Flatcar Service Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of extension of time and extension of effective date of proposed rule (exemption).

SUMMARY: In this proceeding, at 45 FR 79123, November 28, 1980, the Commission proposed to exempt rail and truck service provided by rail carriers in connection with trailer on flatcar (TOFC) and container on flatcar (COFC) service from Title 49, Subchapter IV of the U.S. Code. The proposed exemption is based on findings that regulations is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power by railroads. The proposed exemption is intended to remove unnecessary regulation and to permit railroads to market TOFC and COFC services in response to demand for the services.

Comments were due December 29, 1980 and the effective date of these rules was to have been January 27, 1981.

Considering the importance of this proceeding and the difficulties some parties are experiencing meeting the deadline for comments, we will extend the period for comments to January 12, 1981. The effective date is also postponed to February 10, 1981.

DATE: Comments are now due January 12, 1981. The effective date of proposed rule is extended to February 10, 1091.

ADDRESS: An original and 15 copies of comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 275–7693.

Decided: December 16, 1980.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–40115 Filed 12–23–80; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 45, No. 249
Wednesday, December 24, 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

Economics and Statistics Service

Modification of January "Prospective Plantings" Report

In recognition of responses from data users to the proposal announced in the November 4 issue of the **Federal Register**, the Economics and Statistics Service will issue a modified "Prospective Plantings" report on January 21, 1981. The January report will include intentions to plant cotton, rice, corn, oats, barley, sorghum, sweet potatoes, soybeans and peanuts in Alabama, Arizona, Arkansas, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Tennessee, Texas, Oklahoma, South Carolina and Virginia. An intentions report for major crops in the remaining 32 states that plant in the late spring will be issued as of March 1. As deemed necessary, an update survey in the 16 states surveyed in January may also be conducted in March. Totals from the January and March reports will be combined to provide a national "Prospective Plantings" report. This report will be in lieu of the April "Prospective Plantings" report which is issued too late for farmers to adjust planting activities.

This action will provide data users with the needed early season indications of farmers' planting intentions and at the same time allow more time for producers to monitor markets and finalize their plans while accomplishing the required reduction in expenditures and reporting burden.

Done at Washington, D.C., this 22nd day of December 1980.

Kenneth R. Farrell,

Administrator.

[FR Doc. 80-40181 Filed 12-23-80; 8:45 am]

BILLING CODE 3410-18-M

DEPARTMENT OF COMMERCE

Bureau of the Census

SES Bonus Recipients

In accordance with the provisions of the Civil Service Reform Act, notice is hereby given that the following Bureau of the Census employees are recipients of SES bonuses which will be awarded on January 7, 1981.

Dr. Barbara A. Bailar, Associate Director for Statistical Standards and Methodology, $5,512.38
Mr. Roger H. Bugenhagen, Chief, Industry Division, $5,512.38
Mr. George E. Hall, Associate Director for Demographic Fields, $5,512.38
Mr. Howard N. Hamilton, Assistant Director for Computer Services, $5,512.38
Mr. Charles D. Jones, Chief, Statistical Methods Divsion, $5,512.38
Ms. Shirley Kallek, Associate Director for Economic Fields, $10,022.50

Vincent P. Barabba,

Director, Bureau of the Census.

December 19, 1980.

[FR Doc. 80-40166 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-01-M

International Trade Administration

Current Steel Trigger Price Coverage; Request for Public Comment

AGENCY: U.S. Department of Commerce

ACTION: Announcement of a request for public comment from interested parties on clarifications in the coverage of imported basic steel mill products under the Trigger Price Mechanism (TPM).

SUMMARY: This notice is to advise the public that the Department of Commerce requests public comment on products currently covered by published trigger prices on which the coverage in unclear or appears to be in error. A schedule of products currently covered by published prices is included. Interested parties should submit written comments to this office within thirty days from the date of publication of this notice.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley P. Gustafson or Joda C. Taylor, Office of Agreements Compliance, Import Administration, International Trade Administration, Room 2004, Department of Commerce, Washington, D.C. 20230. (202-377-4491)

SUPPLEMENTARY INFORMATION: Trigger Price Mechanism (TPM) price manuals are issued quarterly by the Department of Commerce ("the Department") showing product descriptions and giving current trigger prices. All steel products covered by published trigger prices are included in these manuals. The Department has received many comments on inaccurate or confusing coverage—for example, we have been informed that the sizes of commercial quality wire rod covered on page 2-1 of the manual are not the sizes commonly imported. In order to be able to clarify all issues of this type the Department wishes to receive written comment from all interested parties on inaccurate or confusing product coverage.

Products which are currently covered by published prices are found in the American Iron & Steel Institute (AISI) categories shown below:

AISA Category 2 Wire Rods
AISA Category 3 Structurals, 3" and over
AISA Category 4 Sheet Piling
AISA Category 5 Hot Rolled Plate
AISA Category 6 Rail & Track Accessories
AISA Category 8 Reinforcing Bars
AISA Category 9 Structurals, under 3"
AISA Category 10 Hot Rolled Carbon Bars
AISA Category 11 Hot Rolled Alloy Bars
AISA Category 12 Cold Finished Bars
AISA Category 14 Welded Pipe & Tubing
AISA Category 15 Other Pipe & Tubing
AISA Category 16 Round and Shaped Wire
AISA Category 19 Wire Fencing
AISA Category 20 Wire Nails
AISA Category 21 Barbed Wire
AISA Category 22 Black Plate
AISA Category 23 Electolytic Tin Plate
AISA Category 25 Hot Rolled Sheets
AISA Category 26 Cold Rolled and Electrical Sheets
AISA Category 27 Coated Sheets (including galvanized)
AISA Category 29 Hot Rolled Strip
AISA Category 32 Tin-Free Steel

The current TPM price manual is available from the Publications Sales Branch, Room 1617, U.S. Department of Commerce, Washington, D.C. 20230 for $10.00 per copy.

Dated: December 19, 1980.

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-40054 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

Maritime Administration

[Docket S-633]

American Heavy Lift Shipping Co.; Amendment To Show Cause

A Show Cause Notice regarding the application of American Heavy Lift Shipping Co. for operating-differential subsidy was published in the Federal Register on December 10, 1980 (45 FR 81241) which advised, in part as follows:

"* * * AHL has agreed to limit the scope of its operations as follows:

- No subsidized carriage of cargoes subject to the cargo preference statutes of the United States."

AHL has requested that this limitation be amended to read as follows:

- No subsidized carriage of cargoes subject to the cargo preference statutes of the United States, except heavy lift and ancillary cargoes.

Notice is hereby given that the Show Cause Notice is amended to conform with the amended limitation set forth above.

Dated: December 19, 1980.

By Order of the Maritime Subsidy Board.

Georgia Pournaras Stamas,

Assistant Secretary.

[FR Doc. 80-40128 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-15-M

Bank of California; Roster of Approved Trustees; Request for Removal Without Disapproval

Notice is hereby given, pursuant to 46 CFR 221.28, that The Bank of California, with offices at 400 California Street, San Francisco, California 94104 has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, The Bank of California certified that it is no longer acting or proposing to act as Trustee under a Vessel or Shipyard Financing Trust pursuant to Public Law 89-346 and 46 CFR 221.21-221.30.

Dated: December 17, 1980.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 80-40057 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-15-M

National Bureau of Standards

Memorandum of Understanding Between the National Bureau of Standards, Department of Commerce, and the Research and Special Programs Administration, Department of Transportation, Regarding Standardization of Data Elements and Representations Used in Automated Transportation Statistics, Data, and Information Systems

In accordance with § 6.7 of Part 6, Title 15 of the Code of Federal Regulations, the National Bureau of Standards has the responsibility for arranging with appropriate executive branch departments and independent agencies to assume leadership and undertake responsibilities for the development and maintenance of specific Federal program and Federal general data element and representation standards.

An arrangement has been made between the National Bureau of Standards and the Research and Special Programs Administration on the standardization of data elements and representations used in automated transportation statistics, data, and information systems. This notice provides the text of the memorandum of understanding between the National Bureau of Standards and the Research and Special Programs Administration in this area of standardization. Persons desiring further information about this notice may contact Mr. Roy G. Saltman, Application Systems Division, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921-3491.

Dated: December 18, 1980.

Ernest Ambler,

Director.

Memorandum of Understanding Between the National Bureau of Standards, Department of Commerce, and the Research and Special Programs Administration, Department of Transportation

1. *Objective.* To establish cooperation between the National Bureau of Standards (NBS) and the Research and Special Programs Administration (RSPA) regarding the standarization of data elements and representations (codes) used in automated transportation statistics, data, and information systems. The RSPA will assume leadership in the development and maintenance of transportation data element and representation standards for use in the Federal establishment.

2. *Authorities.* The National Bureau of Standards has the responsibility for arranging with appropriate executive branch departments and independent agencies to assume leadership and undertake responsibilities for the development and maintenance of specific Federal program and Federal general standards (15 CFR 6.7(a)(2)(i)).

The Department of Transportation (DOT) has the responsibility for promoting and undertaking development, collection, and dissemination of technological, statistical, economic, and other information relevant to domestic and international transportation (49 U.S.C. 1653(a)). The Administrator of RSPA is the principal transportation information official of DOT with the responsibility for planning and development of a coordinated program in transportation information (DOT ORDER 5300.1). Procedures for planning, proposing, developing and promulgating DOT data standards will be governed by DOT ORDERS 1370.4A and 1370.5.

3. *Applicable Policy:* Data elements and representations that are prescribed for interchange among more than one executive department or agency or with the private sector including industry, State, local, or other Governments, or with the public at large will be considered for standardization as either Federal general or Federal program standards. Federal general standards are the highest level standards followed by Federal program standards, agency standards, and unit standards in that order (15 CFR 6.6 (a), (b)).

4. *Definition.* The term "transportation data" refers to a representation of transportation facts, concepts, or instructions in a formalized manner suitable for communication, interpretation, or processing by manual or automatic means. Examples of data are automobile registration data, abstracts of transportation literature, reliability of components and transportation systems, and other data needed for development of transportation policies, calibration and use of analytical models, and conduct of transportation-related research and development activities.

5. *Responsibilities of the National Bureau of Standards.* The National Bureau of Standards will:

1. Prepare submissions for the approval by the Secretary of Commerce of standards recommended by RSPA as Federal program standards and Federal general standards involving transportation data.
2. Maintain and publish at least annually a registry of approved standards and those under

development concerned with data elements and representations involving transportation data in the Federal Information Processing Standards series.

3. Provide procedures, guidelines and criteria concerning the standardization of data elements and representations to assist RSPA in the development and maintenance of transportation data standards.
4. Arrange for and coordinate appropriate representation and participation on Federal data standards committees for the purpose of review and comment on proposed transportation data standards that are used in automated systems.
5. Arrange for the publication of this agreement in the **Federal Register.**
6. Designate an office or official to act as a single point of contact on matters related to this agreement.

6. *Responsibilities of the Research and Specal Programs Administration.* The Research and Special Programs Administration will:

1. Assume leadership and work with other agencies in the development of Federal general and Federal program data standards involving transportation.
2. Implement within DOT transportation data standards that are approved under the provisions of the Federal Information Processing Standards program, and assist NBS in the assessment of the need, impact, benefits, and problems related to the implementation of approved standards or those standards being considered for development.
3. Review all requests referred by NBS for exceptions, deferments, and revisions of standards applicable to Federal transportation information systems and forward appropriate recommendations on these requests to NBS.
4. Prepare and submit an annual status report for NBS, listing data elements and representations to be incorporated in standards planned and/or under development for use within DOT data systems. These reports will serve as source references to avoid duplication in the design of new data element codes and representations and to assist in determining possible subjects for future Federal standardization.
5. At the request of NBS, participate on committees and task groups that may be formed to develop and maintain voluntary national industry standards and Federal general and program standards which have a relationship to the DOT mission.
6. Designate an office or official to act as a single point of contact on matters related to this agreement.
7. Maintain all standards developed and approved under this agreement. Submit to the NBS any alterations or updates of transportation data standards, as required.

7. *Implementation:* This Memorandum of Understanding is subject to review and amendment at any time upon joint approval and may be terminated by either agency by a 60-day written notice to the other agency.

This Memorandum is effective when approved by authorized officials from both agencies.

DOC/NBS Contact, Program Manager, Data Element and Representation Standards, National Bureau of Standards, Telephone: Commercial (301) 921–3491; FTS 921–3491

Ernest Ambler,

Director, National Bureau of Standards, U.S. Department of Commerce.

Dated: November 20, 1980.

DOT/RSPA Contact, Director, Office of Resources Management, Research and Special Programs Administration, Telephone: Commercial (202) 426–4211; FTS 426–4211

Howard J. Dugoff,

Administrator, Research and Special Programs Administration, U.S. Department of Transportation.

Dated August 19, 1980.

[FR Doc. 80-40096 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-13-M

Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet on Thursday, January 15, 1981, from 8:30 a.m. to 5:00 p.m., in Lecture Room B, Administration Building, National Bureau of Standards, Gaithersburg, Maryland.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Ms. Kay Byerly, Office of the Director, National Bureau of Standards, Washington, D.C. 20234, telephone (301) 921–3413.

Dated: December 18, 1980.

Ernest Ambler,

Director, NBS.

[FR Doc. 80-40097 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-13-M

Approval of Federal Information Processing Standards; Code for Information Interchange; Hollerith Punched Card Code

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. On July 22, 1980, notice was published in the **Federal Register** (45 FR 48934–48935) announcing that revisions to standards for Code for Information Interchange and Hollerith Punched Card Code were being proposed for Federal use. Interested parties were invited to submit written comments concerning those proposed revisions to the National Bureau of Standards (NBS).

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the revised standards as Federal Information Processing Standards (FIPS), and prepared detailed justification documents for the Secretary's review in support of those recommendations. The purpose of this notice is to announce that the Secretary approved the revised Code for Information Interchange Standard on October 21, 1980, and the revised Hollerith Punched Card Code Standard on October 14, 1980. The revised standards shall be published as FIPS Publication 1–1, Code for Information Interchange, and as FIPS Publication 14–1, Hollerith Punched Card Code. The provisions of these standards are effective December 24, 1980.

The detailed justification documents which were presented to the Secretary, and which includes an analyses of the written comments received, are part of the public record and are available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, NW., Washington, D.C. 20230.

Each of the approved FIPS contains two portions: (1) an announcement

portion which provides information concerning the applicability, implementation, and maintenance of the standards and (2) a specifications portion which deals with the technical requirements of the standards. Only the announcement portion of the standards are provided in this notice. These FIPS adopt in whole American National Standards X3.4–1977, Standard Code for Information Interchange (ASCII), and X3.26–1980, Hollerith Punched Card Code.

By arrangement with the American National Standards Institute, interested parties may purchase copies of these standards, including the specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies section of the announcement portion of the standards.

Persons desiring further information about these standards may contact Mr. John L. Little, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3723.

Dated: December 19, 1980.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 1–1

Announcing the Standard for Code for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Code for Information Interchange (also commonly known as, "Ask–Ee"), ASCII (FIPS 1–1).

2. *Category of Standard.* Hardware and Software Standard, Interchange Codes, Media, and Data Files.

3. *Explanation.* This standard specifies a code and character set for use in Federal information processing systems, communications systems, and associated equipments. FIPS PUB 1 (1968) excluded the "New Line" (NL) option contained in the definition of "Line Feed" (LF) of American National Standard X3.4–1968. The revised ASCII standard, X3.4–1977 makes only minor revisions to X3.4–1968. All of X3.4–1977 is adopted as FIPS 1–1, including the "New Line" option.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Authority.* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard X3.4–1977, Standard Code for Information Interchange (ASCII).

7. *Related Documents.*

a. ISO Standard 646–1973, 7-Bit Coded Character Set for Information Processing Interchange.

b. CCITT Recommendation V3, 1972, International Alphabet No. 5.

c. American National Standard X3.41–1974, Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code for Information Interchange (FIPS PUB 35).

d. ISO Standard 2022–1973, Code Extension Techniques for Use with the ISO 7-Bit Coded Character Set.

e. American National Standard X3.64–1979, Additional Controls for Use with the American National Standard Code for Information Interchange.

f. ISO Standard 6429, Additional Controls for Character Imaging Devices.

g. ISO Standard 1745–1975, Information Processing—Basic Mode Control Procedures for Data Communication Systems.

h. American National Standard X3.57–1977, Structure for Formulating Message Headings for Information Interchange Using ASCII for Data Communication System Control.

i. American National Standard X4.14–1971, Alphanumeric Keyboard Arrangements Accommodating the Character Sets of ASCII and American National Standard Character Set for Optical Character Recognition.

j. FIPS PUB 2, Perforated Tape Code for Information Interchange (X3.6–1965).

k. FIPS PUB 3–1, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI) (X3.22–1973).

l. FIPS PUB 14–1, Hollerith Punched Card Code (X3.26–1980).

m. FIPS PUB 15, Subsets of the Standard Code for Information Interchange.

n. FIPS PUB 16–1, Bit Sequencing of the Code for Information Interchange in Serial-by-Bit Data Transmission (X3.15–1976).

o. FIPS PUB 17–1, Character Structure and Character Parity Sense for Serial-by-Bit Data Communication in the Code for Information Interchange (X3.16–1976).

p. FIPS PUB 18–1, Character Structure and Character Parity Sense for Parallel-by-Bit Data Communication in the Code for Information Interchange (X3.25–1976).

q. FIPS PUB 25, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Encoded) (X3.39–1973).

r. FIPS PUB 32, Optical Character Recognition Character Sets (X3.17–1977) and (X3.49–1975).

s. FIPS PUB 33, Character Set for Handprinting (X3.45–1974).

t. FIPS PUB 35, Code Extension Techniques in 7 or 8 Bits (X3.41–1974).

u. FIPS PUB 36, Graphic Representation of the Control Characters of ASCII (X3.32–1973).

v. FIPS PUB 50, Recorded Magnetic Tape for Information Interchange, 6250 cpi (246 cpmm), Group Coded Recording (X3.54–1976).

w. FIPS PUB 51, Magnetic Tape Cassettes for Information Interchange (3.810 mm [0.150 inch] Tape at 32 bpmm [800 bpi], Phase Encoded) (X3.48–1977).

x. FIPS PUB 52, Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (1/4 inch), 63 bpmm (1600 bpi), Phase Encoded (X3.56–1977).

y. FIPS PUB 86, Additional Controls for use with ASCII (X3.64–1979).

z. ISO Standard 4873–1979, 8-Bit Coded Character Set for Information Interchange.

8. *Applicability.* Generally applicable to the representation of character coded information in information interchange and files used in data processing, communications, and related equipments, as detailed in FIPs PUB 7, Implementation of the Code for Information Interchange and Related Media Standards. Information concerning the use of this standard in communications systems that are a part of the National Communications System may be obtained from the Manager, National Communications System, Attention: NCS–O, Washington, D.C. 20305.

9. *Implementation Schedule.* All computers and related equipment configurations brought into the Federal Government inventory on or after the effective date of this FIPS PUB must have the capability to use this standard. All applicable equipment ordered after that date must be in conformance with this standard or a subset as described by FIPS PUB 15 or an extension as described by FIPS PUB 35 unless a waiver has been obtained in accordance with FIPS PUB 7.

10. *Specifications.* This standard adopts in whole American Standard X3.4–1977, Standard Code for Information Interchange (ASCII).

11. *Qualifications.* None.

12. *Waivers.* See FIPS PUB 7.

13. *Where to Obtain Copies.* Copies of this publication are available for sale from the National Technical Information

Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 1–1 (FIPS–PUB–1–1), and title. Payment may be made by check, money order, credit card or NTIS deposit account.

Federal Information Processing Standards Publication 14–1

Announcing the Standard for Hollerith Punched Card Code

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15, Code of Federal Regulations (CFR).

1. *Name of Standard.* Hollerith Punched Card Code (FIPS 14–1).

2. *Category of Standard.* Hardware Standard, Interchange Codes and Media.

3. *Explanation.* This standard specifies the representation of the Federal Standard Code for Information Interchange (FIPS 1–1), in 82.55mm (3¼ in) wide, 12-row, 80-column, rectrangular hole, "Hollerith" punched cards used in Federal information processing systems and associated equipments. The original FIPS PUB 14, dated 1971 October 1, adopted only half of the 256 available hole patterns, corresponding to the 128 characters of FIPS–1 (ASCII). This revision of FIPS PUB 14, designated as FIPS PUB 14–1 adopts all 256 hole patterns of American National Standard X3.26–1980, Hollerith Punched Card Code, in accordance with FIPS 35, Code Extension Techniques in 7 or 8 Bits. Most Federal Government applications will not require any of the 128 additional hole patterns, but when any of them are needed, they should be used in accordance with this standard.

Graphic substitions using special symbols to represent "Logical OR" and "Logical NOT" were permitted by FIPS 1 and FIPS 14 in place of "Exclamation Point" and "Circumflex" and the symbol for "Vertical Line" was shown as a broken vertical line. These graphic substitutions are not permitted in FIPS 1–1 nor in FIPS 14–1, and "Vertical Line" is shown as a solid vertical line.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard X3.26–1980, Hollerith Punched Card Code.

7. *Related Documents.*

a. FIPS PUB 1–1, Code for Information Interchange.

b. FIPS PUB 13, Rectangular Holes in Twelve-Row Punched Cards.

c. FIPS PUB 15, Subsets of the Standard Code for Information Interchange.

d. FIPS PUB 35, Code Extension Techniques in 7 or 8 Bits.

e. American National Standard X3.11–1969 (Revised), Specifications for General Purpose Paper Cards for Information Processing.

f. American National Standard X3.21–1967, Rectangular Holes in Twelve-Row Punched Cards.

g. International Standard ISO 6586–1980, Information Processing—Representation of 7-Bit and 8-Bit Coded Character Sets on Punched Cards (formerly ISO 1679–1973 for 7 bits and ISO 2021–1975 for 8 bits).

h. International Standard ISO 1681–1973, Information Processing—Unpunched Paper Cards—Specification.

i. International Standard ISO 1682–1973, Information Processing—80 Column Punched Paper Cards—Dimensions and Location of Rectangular Punched Holes.

8. *Applicability.* Generally applicable to the representation of character coded information in 82.55mm (3¼ in) wide, 12-row, 80-column, rectangular hole, "Hollerith" punched cards used with data processing, communications and related equipments. This standard coding does not apply to other types of punched cards, such as those with round holes. It is not applicable to "edge-punched" cards, whose code holes resemble those used in perforated tape. It is applicable when subsets of the standard code are used as specified in FIPS PUB 15, Subsets of the Standard Code for Information Interchange, and it is applicable when 8-bit character-coded data is used as specified in FIPS PUB 35, Code Extension Techniques in 7 or 8 Bits.

9. *Implementation Schedule.* All applicable equipment ordered on or after the effective date of this FIPS PUB must be in accordance with this standard or a subset thereof as specified by FIPS 15 unless a waiver has been obtained in accordance with the procedure described below. Exceptions to this standard are made in the following cases:

a. For equipment installed or on order prior to the effective date of this FIPS PUB.

b. Where procurement actions are into the solicitation phase (i.e., Request for Proposals or Invitation for Bids have been issued) on the effective date of this FIPS PUB.

c. Where 48 or 64 character punched card equipment is leased to replace like equipment and where such action satisfies systems requirements and results in reduced costs to the Government (e.g., punched card equipment obtained through third party leasing agreements or Government-wide procurement contracts).

10. *Specifications.* This Federal standard adopts in whole American National Standard X3.26–1980, Hollerith Punched Card Code.

11. *Qualifications.* Variations such as character substitutions or additional hole patterns will result in a code which does not conform to the standard. Such variations, if required by agencies having special requirements, must be coordinated with the National Bureau of Standards and waived by the agency head prior to final agency procurement authorization. This Federal standard includes the 128 additional hole patterns contained in Columns 8 through 15 of Code Table 2.1., of the American National Standard X3.26–1980.

12. *Special Information.* The size, location, and tolerances of rectangular holes in 12-row, 80-column, 82.55mm (3¼ in) wide punched cards are specified in FIPS 13.

13. *Waivers.* Heads of agencies may waive the provisions of the implementation schedule. Proposed waivers relating to the procurement of punched card equipment will be coordinated in advance with the National Bureau of Standards. Letters should be addressed to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234.

They should describe the nature of the waiver being sought and set forth the reasons therefor. Sixty days should be allowed for review and response by the National Bureau of Standards. The waiver is not to be made until a reply from the National Bureau of Standards is received; however, the final decision for granting the waiver is a responsibility of the agency head.

14. *Where to Obtain Copies.* Copies of this publication are available for sale from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 14–1

(FIPS–PUB–14–1), and title. Payment may be made by check, money order, credit card or NTIS deposit account.

[FR Doc. 80–40280 Filed 12–23–80; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals; Receipt of Application for General Permit

Notice is hereby given that the following Application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. fishery conservation zone, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

Asociacion Nacional de Armadores de Buques Congeladores de Pesquerias Vaias, of Vigo, Spain has applied for a Category 1: "Towed or Dragged Gear" general permit to incidentally take 20 phocid seals and 20 small cetaceans within the U.S. fishery conservation zone in 1981.

The Application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.

Interested parties may submit written views on the Application within 30 days of the date of this Notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: December 18, 1980.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80–40179 Filed 12—23—80; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Its Salmon Subpanel and its Scientific and Statistical Committee; Meeting Amendment

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of Pacific Fishery Management Council (PFMC), Scientific and Statistical Committee (SSC) and Salmon Subpanel meeting amendments.

SUMMARY: Portions of the scheduled meetings on January 6–8, 1981, of the PFMC, its SSC and its Salmon Subpanel, published in the **Federal Register,** December 2, 1980 (45 FR 79861–79862) have been amended as follows:

PFMC (open meeting)

From: Convening on January 7, 1981 (10 a.m. to 5 p.m.)

To: Convening on January 7, 1981 (1 p.m. to 5 p.m.)

PFMC (closed session)

From: Convening on January 7, 1981 (8 a.m. to 10 a.m.)

To: Convening on January 7, 1981 (9 a.m. to 12 noon)

SSC (open meeting)

From: Convening on January 6, 1981 (1 p.m. to 5 p.m.); January 7, 1981 (8 a.m. to 5 p.m.)

To: Convening on January 6, 1981 (8 a.m. to 5 p.m.); January 7, 1981 (8 a.m. to 12 noon).

Salmon Subpanel (open meeting)

From: Convening on January 6, 1981 (11 a.m. to 5 p.m.)

To: Convening on January 6, 1981 (8 a.m. to 5 p.m.)

A joint meeting of the SSC and Salmon Subpanel will be held on January 5, 1981, from 2 p.m. to 5 p.m. All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221–6352.

Dated: December 19, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80–40178 Filed 12–23–80; 8:45 am]

BILLING CODE 3510–22–M

Solicitation of Preliminary Proposals

AGENCY: National Marine Fisheries Services, NOAA.

ACTION: Solicitation of Preliminary Proposals.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service are soliciting preliminary research proposals for Emergency Striped Bass Studies to be funded under Section 7 of the Anadromous Fish Conservation Act (Pub. L. 89–304), as amended by Pub. L. 96–118.

DATES: Preliminary proposals must be received on or before 5 p.m. on January 12, 1981. Instructions for preparing proposals are available from the Striped Bass Project Manager, National Marine Fisheries Service, State/Federal Division (F/CM1), Office of Resource Conservation and Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Norris B. Jeffrey, Striped Bass Project Manager. Telephone: (202) 634–7466.

Dated: December 19, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80–40177 Filed 12–23–80; 8:45 am]

BILLING CODE 3510–22–M

Office of the Secretary

Privacy Act Issuances; Annual Republication of Systems of Records

Correction

In FR Doc. 80–37773 appearing at page 82105 in the issue for Friday, December 12, 1980, the following corrections should be made at that page:

1. The paragraph designated "DATES" should have read as follows: "DATES: This document fulfills the annual notice requirements of the Privacy Act of 1974. Comments on the proposal to revise two existing systems are due January 11, 1981."

2. The sixth complete paragraph under "SUPPLEMENTARY INFORMATION" should have read as follows:

"For the items in Appendix I, the public is invited to submit written data, views, or arguments to the Assistant Secretary for Administration (Attn: Information Policy Division, Room 5319), U.S. Department of Commerce, Washington, D.C. 20230 (telephone 202–377–4217), any time on or before January 11, 1981. These changes will become effective January 11, 1981, unless the Department notices to the contrary.

BILLING CODE 1505–01–M

COMMITTEE FOR IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Levels for Certain Man-Made Fiber Textile Products from Costa Rica

December 18, 1980

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Granting an increase to 1,685,250 dozen for carryforward applied to Category 649 (brassieres), produced or manufactured in Costa Rica and exported during the agreement year which began on January 1, 1980.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980, between the Governments of the United States and

Costa Rica provides, among other things, for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used deducted from the level in the succeeding year. At the request of the Government of Costa Rica carryforward is being applied to the level of restraint established for man-made fiber textile products in Category 649 during the agreement year which began on January 1, 1980.

EFFECTIVE DATE: December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On November 28, 1980, there was published in the **Federal Register** (45 FR 79136) a letter dated November 21, 1980 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of man-made fiber textile products, produced or manufactured in Costa Rica, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, under the terms of the bilateral agreement, to increase the level of restraint established for man-made fiber textiel products in Category 649 during the twelve-month period which began on January 1, 1980.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 18, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On November 21, 1980, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, of man-made fiber textile products, produced or manufactured in Costa Rica, in excess of a designated level of restraint. The Chairman further advised you that the level of restraint is subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on December 18, 1980, and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 649, produced or manufactured in Costa Rica, in excess of 1,685,250 dozen.

The action taken with respect to the Government of Costa Rica and with respect to imports of man-made fiber textile products from Costa Rica has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40079 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Restraint Levels for Certain Cotton Textile Products From Pakistan

December 19, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton textile products imported from Pakistan, effective on January 1, 1981.

SUMMARY: The Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan establishes in its final year specific levels of restraint for certain cotton textile products in Categories 313, 315, 339, 341, and 363, produced or manufactured in Pakistan and exported during the eighteen-month period beginning on January 1, 1981 and extending through June 30, 1982. The agreement also establishes consultation levels during that same period for certain categories, such as Categories 317, 320, 331, 336, 340, 342, 348, 359 and 369 pt., which are not subject to specific ceilings and which may be adjusted upon agreement between the two governments. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption of cotton textile products in the foregoing categories in excess of the designated eighteen-month levels of restraint.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).)

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–5423).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 19, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the eighteen-month period extending through June 30, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in Pakistan, in excess of the indicated eighteen-month levels or restraint.

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980, between the Governments of the United States and Costa Rica, which provide, in part, that: (1) the specific limit may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Category	18-month level of restraint
313	100,817,267 square yards
315*	58,871,828 square yards
317	9,768,000 square yards
320	1,500,000 square yards
331	300,000 dozen pairs
336	23,179 dozen
339	652,911 dozen of which not more than 229,563 dozen shall be in T.S.U.S.A. Nos. 382.0669 and 382.0671.
340	43,750 dozen
341	242,395 dozen
342	58,989 dozen
348	58,989 dozen
3359	400,109 pounds
363	26,411,484 numbers
369[1]	7,826,087

[1] In Category 369, all T.S.U.S.A. numbers in the category except 366.1855.

In carrying out this directive, entries of cotton textile products in the foregoing categories, except Category 317, produced or manufactured in Pakistan, which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Cotton textile products in Category 317, which have been exported prior to January 1, 1981 shall not be subject to this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of Janaury 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan which provide, in part, that: (1) within the aggregate and group limits, specific levels of restraint may be exceeded by designated percentages; (2) specific levels may be increased for carryover and carryforward; (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was publised in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).)

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40083 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Restraint Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From Thailand

December 19, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton, wool and man-made fiber textile products imported from Thailand, effective on January 1, 1981.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand establishes specific levels of restraint for certain cotton, wool and man-made fiber textile products in Categories 331, 334/335, 338/339, 340, 341, 347/348, 445/446, 639, 641, and 645/646, produced or manufactured in Thailand and exported to the United States during the 12-month period beginning on January 1, 1981. The agreement also provides consultation levels for certain categories, such as Categories 319, 320, 336, 435, 604, and 640, which are not subject to specific ceilings and which may be increased upon agreement between the two governments. Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that entry into the United States for consumption or withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 319, 320, 331, 334/335, 336, 338/339, 340, 341, 347/348, 435, 445/446, 604, 639, 640, 641, and 645/646 be limited to the designated 12-month levels of restrairt.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506))

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 19, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the twelve-month period beginning on January 1, 1981, and extending through Decemer 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in the following categories exported from Thailand, in excess of the indicated twelve-month levels of restraint:

Category	12-mo. level of restraint
319	5,000,000 square yards.
320	6,000,000 square yards.
331	365,014 dozen pairs.
334/335	50,426 dozen.
336	22,075 dozen.
338/339	546,165 dozen.
340	96,326 dozen.
341	101,699 dozen.
347/348	172,056 dozen.
435	1,852 dozen.
445/446	14,541 dozen.
604	487,805 pounds.
639	1,199,727 dozen.
640	41,667 dozen.
641	152,075 dozen.
645/646	69,327 dozen.

In carrying out this directive, entries of textile products in the foregoing categories, except Categories 445/446 and 640, produced or manufactured in Thailand which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall to the extent of unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories

445/446 and 640 that have been exported to United States before January 1, 1981 shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment according to the provisions of the bilateral agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand which provide, in part, that: (1) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A detailed description of the textile catetgories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Thailand and with respect to imports of cotton, wool and man-made fiber textile products from Thailand have been determined by the Committee for the functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foregin affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40082 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

Changes in Textile Category System

December 19, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Changes in the Textile Category System.

SUMMARY: The Correlation: Textile and Apparel Categories with the Tariff Schedules of the United States, Annotated provides for placement of Tariff Schedules of the United States, Annotated (TSUSA) numbers in the Textile Category System. Publication of the Tariff Schedules of the United States, Annotated 1981 requires amendments to the Correlation. The amendments are cited in the list which follows this notice.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Claire L. McDermott, International Agreements and Monitoring Division, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 ((202) 377-4212).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

January 1, 1981 Amendments to the Correlation.

Category and changes

333—Change 380.1255 to 380.1245 and 380.1265.
334—Change 380.1290 to 380.1285 and 380.1295.
342—Change 382.3336 to 382.3335.
342—Change 382.3342 to 382.3336 and 382.3341.
342—Change 382.3344 to 382.3337 and 382.3343.
Add 353—748.4042.
Add 354—748.4044.
610—Delete: 338.3022, 338.3023, 338.3040, 338.3051, and 338.3052. Add: 338.3003, 338.3006, and 338.3007.
611—Delete: 338.3062, 338.3063, 338.3082, and 338.3083. Add: 338.3034, 338.3047, 338.3048, and 338.3064.
612—Delete: 338.3027, 338.3028, 338.3030, 338.3031, 338.3037, 338.3038, 338.3056, 338.3057, 338.3058, and 338.3060. Add: 338.3004, 338.3005, 338.3008, 338.3009, 338.3010, 338.3011, 338.3012, 338.3013, 338.3015, 338.3017, 338.3018, 338.3019, 338.3020, and 338.3021.
613—Delete: 338.3067, 338.3068, 338.3070, 338.3071, 338.3087, 338.3088, 338.3090, and 338.3091. Add: 338.3035, 338.3036, 338.3039, 338.3041, 338.3042, 338.3043, 338.3044, 338.3045, 338.3046, 338.3049, 338.3050, 338.3053, 338.3054, 338.3055, 338.3059, 338.3061, 338.3065, 338.3066, and 338.3069.
614—Change 338.3014 to 338.3001.
614—Change 338.3016 to 338.3002.
614—Delete: 338.3072, 338.3073, 338.3077, 338.3078, 338.3080, 338.3081, 338.3092, 338.3093, 338.3094, 338.3095, 338.3096, and 338.3098. Add: 338.3024, 338.3025, 338.3026, 338.3029, 338.3032, and 338.3033.
Add 653—748.4054.
Add 654—748.4062.
669—Change 355.4560 to 355.4520 and 355.4530.

[FR Doc. 80-40081 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

Increasing Import Restraint Level for Certain Wool Apparel Imported From Mexico

December 18, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing from 2,033 dozen to 2,642 dozen the consultation level established for wool dresses in Category 436, produced or manufactured in Mexico and exported during the agreement year which began on January 1, 1980.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).)

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico, provides for consultations to adjust the levels of restraint established for categories not subject to specific ceilings. Accordingly, pursuant to the terms of the bilateral agreement, and at the request of the Government of Mexico, the United States Government has agreed to increase the import restraint level for Category 436 to 2,642 dozen during the agreement year which began on January 1, 1980 and extends through December 31, 1980.

EFFECTIVE DATE: December 18, 1980.

FOR FURTHER INFORMATION CONTACT:

William J. Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 26, 1979, a letter dated December 18, 1979 was published in the **Federal Register** (44 FR 76383) from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established the levels of restraint applicable to certain specified categories of cotton and man-made fiber textile products, produced or manufactured in Mexico and exported to the United States during the twelve-month period which began on January 1, 1980. On October 7, 1980, a further letter dated October 2, 1980 was published in the **Federal Register** (45 FR 66491) which established a level of restraint for wool textile products in Category 436, in addition to those categories previously designated. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry for consumption, or withdrawal from warehouse for consumption, of wool textile products in Category 436 at the increased level of restraint of 2,642 dozen during the agreement year which began on January 1, 1980.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 18, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 18, 1979, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980 of cotton, and man-made fiber textile products in certain specified categories, produced or manufactured in Mexico, in excess of designated levels of restraint. The directive of December 18, 1979 was amended by a directive dated October 2, 1980 concerning wool textile products in Category 436.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on December 18, 1980, to increase the twelve-month level of restraint established for Category 436 to 2,642 dozen.[1]

The actions taken with respect to the Government of Mexico and with respect to imports of wool textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40080 Filed 12-23-80; 8:45 am]
BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army Intent to Prepare A Draft Environmental Impact Statement FOR (DEIS) Tampa Harbor-Alafia River and Big Bend Channel, Florida; Navigation Improvement

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, intends to prepare an Environmental Impact Statement on the feasibility of deepdraft navigation improvements in Tampa Harbor. The mouth of the Alafia River is located on the eastern shore of Hillsborough Bay approximately 3 miles north of the Big Bend Channel. The federally maintained project has a depth of 30 feet mean low water (mlw), with a width of 200 feet and a length of 3.6 miles. Big Bend Channel is located along the southeastern shore of Hillsborough Bay at its point of confluence with Tampa Bay. The privately constructed channel has a uniform depth of approximately 35 feet, mlw, a width of 200 feet, and is approximately 2.2 miles long. The feasibility of deepening and widening both channels and deepening currently existing turning basins at the ends of both channels, it currently under study. The following alternative actions are under consideration:

1. Alafia River Channel.
a. Enlargement of the Alafia River Channel and turning basin to 34 feet, mlw.
b. Enlargement of the Alafia River Channel and turning basin to 38 feet, mlw.
c. Enlargement of the Alafia River Channel and turning basin to 42 feet, mlw.
d. Enlargement of the Alafia River Channel and turning basin to 44 feet, mlw.
2. Big Bend Channel.
a. Federal maintenance of the Big Bend Channel and turning basin at 34 feet, mlw.
b. Federal enlargement and maintenance of Big Bend Channel and turning basin at 38 feet, mlw.
c. Federal enlargement and maintenance of Big Bend Channel and turning basin to 42 feet, mlw.
d. Federal enlargement and maintenance of Big Bend Channel turning basin and main entrance channel to 44 feet, mlw.
3. No Federal action in either one or both channels.

Methods considered for the disposal of dredged material and rock include upland disposal, ocean disposal, placement on existing disposal islands in Tampa Bay for retarding plant succession to benefit birdlife, and possible marsh-mangrove habitat creation.

In accordance with the Fish and Wildlife Coordination Act, participation in the planning process has been initiated with the U.S. Fish and Wildlife Service (FWS) and participation has been solicited from the U.S. National Marine Fisheries Service (NMFS) and the State of Florida. Consultation will be accomplished in accordance with Section 7 of the Endangered Species Act and the Archeological and Historic Preservation Act. Disposal of dredged material in ocean waters will be evaluated pursuant to Section 103 of the Marine Protection, Research, and Sanctuaries Act. If a selected plan involves discharge of material into waters of the United States, the discharge will be specified by application of the criteria of Section 404(b), Federal Water Pollution Control Act.

Scoping will be accomplished by issuance of the public notice, letters of intent to prepare the DEIS, and coordination with Federal, State, and local agencies. A scoping meeting will not be conducted unless deemed necessary. The DEIS will be made available to the public in June 1981 unless circumstances warrant additional time for preparation.

Any questions concerning the proposed action and DEIS can be answered by: Dr. Gerald Atmar, Environmental Studies Section, U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida 32232, Telephone: (904) 791-3615.

Dated: December 15, 1980.

James W. R. Adams,
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 80-40144 Filed 12-23-80; 8:45 am]
BILLING CODE 3710-AJ

[1] The level of restraint has not been adjusted to reflect any imports after December 31, 1979.

DEPARTMENT OF EDUCATION

National Advisory Council on Vocational Education, Legislative Committee; Meeting

AGENCY: National Advisory Council on Vocational Education.

ACTION: Notice of Meeting of Legislative Committee.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the Legislative Committee of the National Advisory Council on Vocational Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: January 13, 1981, 10:00 a.m. to 4:00 p.m.

ADDRESS: O'Hara Hilton Hotel, O'Hare Airport, Chicago, Illinois—Room 2091.

FOR FURTHER INFORMATION CONTACT: George Wallrodt, NACVE Staff, 425 13th Street NW., Suite 412, Washington, DC 20004 (Tel: 202/376-8873).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary concerning the administration of, preparation of general regulations for, and operation of, vocational education programs

supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The Legislative Committee meeting is open to the public, and the proposed agenda will be made up of discussion of issues related to the reauthorization of the Vocational Education Act.

Records are kept of the Committee's proceedings and are available for public inspection at the office of the National Advisory Council on Vocational Education, 425 13th Street NW., Suite 412, Washington, DC 20004, from 9:00 a.m. to 5:00 p.m. on regular business days.

Signed at Washington, DC., on December 19, 1980.

Raymond C. Parrott,

Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 80-40126 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

Library Career Training Program

AGENCY: Department of Education.

ACTION: Application Notice.

Applications are invited for projects under the Library Career Training Program for fiscal year 1981.

Authority for this program is contained in Part B of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 USC 1021 *et seq.*)

This program awards grants to institutions of higher education and other library agencies and organizations.

The purpose of these grants is to assist in training persons in librarianship.

Closing Date for Transmittal of Applications: An application for a grant must be mailed or hand delivered by March 2, 1981.

Applications Delivered by Mail: An Application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.036, Washington, D.C. 20202.

An 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 Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8 a.m. and 4:30 p.m. (Washigton, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: In fiscal year 1981, priorities for levels of training will be as follows: (1) Master's, (2) Doctoral, (3) Associate of Ats, (4) Post-master's, (5) Baccalaureate. Due to the limited amount of funds available for the program during fiscal year 1981, the Secretary will award grants for fellowship projects only. The Secretary will not consider application for institute or traineeship projects.

Available Funds: It is expected that approximately $667,000 will be available for the Library Career Training Program in fiscal year 1981.

It is estimated that these funds could support 24 new projects.

The anticipated award for each new project will be between $16,000 and $62,000.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless the amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages may be obtained by writing to the Library Education and Postsecondary Resources Branch, Attn: II-B, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary strongly urges that the narrative portion of the application not exceed 30 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to this program include the following: (1) Final regulations governing the Library Career Training Program (34 CFR Part 776) as published in the **Federal Register** concurrently with this application notice. Applicants should refer to these regulations in preparing these applications; and (2) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77).

Further Information. For further information contact Frank A. Stevens, Chief, Library Education and Postsecondary Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. Telephone: (202) 245-9530.

(Catalog of Federal Domestic Assistance Program No. 84.036, Library Career Training Program.)

Dated: December 19, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80-40111 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

Strengthening Research Library Resources Program

AGENCY: Department of Education.

ACTION: Application notice.

Applications are invited for noncompeting continuation projects and new projects under the Strengthening Research Library Resources Program for fiscal year 1981.

Authority for this program is contained in Part C of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 U.S.C. 1021 *et seq.*)

This program awards grants to a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research library, and a State or other public library which serves as a major research library.

The purpose of these grants is to promote research and education of higher quality throughout the United States by providing financial aid to institutions with major research libraries to help maintain and strengthen their collections (for use by scholars, researchers, and other qualified users) and to make their holdings available to other libraries whose users have need for research materials.

Closing Date for Transmittal of Applications. Applications for new awards must be mailed or hand delivered by March 16, 1981.

To be assured of consideration for funding, an application for a noncontinuation award should also be mailed or hand delivered by March 16, 1981.

If an application for a noncompeting continuation award is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.091, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Servce 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. Each late applicant for a new award will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications for new awards that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: In formulating proposals for new projects, potential applicants should give special attention of § 778.5 of the regulations, that explains which institutions may receive a grant, and to § 778.7 of the regulations, which contains specific program funding criteria and the number of points attached to each criterion.

Applicants for noncompeting continuation projects should give special attention to § 75.253 of the Education Department General Administrative Regulations (EDGAR), which provides an explanation of the procedure to be used in evaluating these proposals.

Available Funds: It is expected that approximately $6 million will be available for the Strengthening Research Library Resources program in fiscal year 1981. It is estimated that these funds could support up to 36 new projects with approximately $5 million and support 4 noncompeting continuation projects with approximately $1 million.

However, these estimates do not bind the U.S. 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: Application forms and program information packages are expected to be ready for mailing by January 16, 1981. They may be obtained by writing to the Library Education and Postsecondary Resources Branch, Attn: II–C, U.S. Department of Education, (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. The Secretary strongly urges that the narrative portion of the application not exceed 50 pages in length. The Secretary further urges that applicants do not submit information that is not requested.

It will not be necessary for applicants for noncompeting continuation projects to include the basic institutional data required in the original application. The new narrative will be expected to address iself to project activities for the continuing year requested.

Applicable Regulations: Regulations applicable to this program are: (1) Regulations governing the Strengthening Research Library Resources Program (34 CFR Part 778) as published in the **Federal Register** concurrently with this application notice. Applicants should refer to these regulations in preparing their applications; and, (2) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77).

Further Information: For further information contact Mr. Frank A. Stevens, Chief, Library Education and Postsecondary Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245–9530.

(Catalog of Federal Domestic Assistance No. 84.091, Strengthening Research Library Resources.)

Dated December 19, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80-40112 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

College Library Resources Program

AGENCY: Department of Education.

ACTION: Application notice.

Applications are invited for grants under the College Library Resources Program for fiscal year 1981.

Authority for this program is contained in Part A of Title II of the Higher Education Act of 1965, as amended. (20 U.S.C. 1021 *et seq.*)

This program awards grants to an institution of higher education, a branch of an institution of higher education, a combination of these institutions, and other public and private nonprofit library institutions whose primary function is to provide library and information services to institutions of higher education on a formal cooperative basis.

The purpose of these grants is to assist institutions of higher education and other public and private nonprofit library institutions to improve the quality of their library resources, including law library resources, and to encourage libraries of institutions of higher education to share their resources throught the establishment and maintenance of networks.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered by March 23, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.005, Washington, D.C. 20202.

An 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. Applications for individual branch campuses should be sent in separate envelopes and not combined.

Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W. Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program information: Grant applications may not exceed $10,000. To be considered for a grant, applicant institutions must be certified as eligible by the Department of Education's Division of Eligibility and Agency Evaluation and must meet the maintenance-of-effort requirements for library materials, as set forth in the regulations.

Available funds: It is expected that approximately $4,988,000 will be available for the College Library Resources Program in fiscal year 1981.

It is expected that approximately 2,600 grants will be made.

The average grant will be approximately $2,000. All of these will be new awards; no funds are reserved for continuation awards.

However, these estimates do not bind the U.S. 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: Application forms and program information packages will be mailed to all fiscal year 1980 applicants.

Application forms may also be obtained by writing to the Libray Education and Postsecondary Resources Branch, Attn. II–A, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the instructions and forms included in the program package. A narrative is required to explain a request of the waiver of the maintenance-of-effort requirement or to describe networking activities. The Secretary urges that all narratives be as brief as possible.

Applicants should be aware that any substantive changes required to the application as a result of the comments made to the proposed regulations will be published in the **Federal Register** prior to the closing date in this notice.

Applicable regulations: Regulations applicable to this program include the following: (1) Proposed regulations governing the College Library Resources Program (34 CFR Part 773) as published in the **Federal Register** December 23, 1980 (Part VII) with this application notice. Applicants should refer to these regulations when preparing their applications; and (2) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77).

FURTHER INFORMATION: For further information contact Frank A. Stevens, Chief, Library Education and Postsecondary Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W. Washington, D.C. 20202. Telephone: (202) 245–9530.

(Catalog of Federal Domestic Assistance Program No. 84.005, College Library Resources Program)

Dated: December 19, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80–40110 Filed 12–23–80; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Review Requirements, Intent to Prepare a Floodplain/Wetlands Assessment; Compliance with 10 CFR 1022

AGENCY: Department of Energy.

ACTION: Notice of Intent to prepare a Floodplain/Wetlands Assessment for a Geothermal Project in Imperial County, California.

SUMMARY: The Department of Energy announces its intent to prepare a floodplain/wetlands assessment to assess the effects on the New River floodplain and the wetlands at the Salton Sea in Imperial County, California from a proposed Department of Energy action to guaranty a loan to finance a 50 MWe geothermal power generating project. The project includes the construction and operation of a water treatment facility of which part will be located on the floodplain. Water will be diverted from the New River and injected into the ground for the purpose of geothermal fluid replacement. This will decrease instream flow in the New River and also decrease the flow from the New River into the Salton Sea. The floodplain/wetlands assessment will be prepared concurrently with and will be included in an environmental assessment for the project to be prepared by the Department of Energy in compliance with the requirements of National Environmental Policy Act (NEPA). Upon completion of the floodplain/ wetlands assessment, a statement of findings will be published in the **Federal Register.**

BACKGROUND INFORMATION: The Heber geothermal field is located in Imperial County, California, approximately five miles south of El Centro and three miles north of the U.S.-Mexico border. The proposed action, which the floodplain/ wetlands assessment will address, consists of an loan guaranty application by Southern California Edison Company for construction and operation of a powerplant (52MWe gross, 41MWe net) and water treatment module. The power plant will utilize a two stage flash process fueled by geothermal fluid from the Heber field. The plant will be located on 28 acres of undeveloped land approximately 1.6 miles south-southeast

of the Southern Pacific Railroad and the Daffodil Canal. The water treatment facility, which will withdraw and treat New River water so that it may be injected into the Heber geothermal reservoir will be located near New River at the Clark Road Crossing. The withdrawal pump, pipes, sludge drying ponds and sludge disposal land fill will be located on the New River floodplain. The water treatment plant and deep well injection facilities will be located above the New River floodplain on non-agricultural land.

When operating at full design rate, the 50MWe plant will use makeup water at an average rate of 2500 gallons per minute. The design rate for the treatment plant is 3000 gallons per minute, which corresponds to withdrawal of 5000 acre-feet per year of water from the New River. This withdrawal rate is about 5% of the average New River flow at the Clark Road Crossing.

Identification of Issues

The following issues will be analyzed in preparing the environmental assessment. The list is not intended to be all inclusive nor is it intended to be a predetermination of impacts.

1. Effects of placement of the water treatment facility on the floodplain of the New River, e.g., flood hazard, disturbance of the natural environmental, etc.
2. Effects of water withdrawal on the riparian communities along the New River.
3. Effects of water withdrawal on the wetlands surrounding the Salton Sea.
4. Alternatives to the proposed use of the floodplain/wetlands.

Comments

All interested parties are invited to submit comments or suggestions by January 5, 1980 to:

Ms. Kathleen Schlegel, Program Manager, Heber Loan Guaranty Application, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

For general information on the assessment process contact:

NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, U.S. Department of Energy, ATTN: Mr. Raymond Pelletier, Rm. 4G-047, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202-252-4610.

Dated: December 18, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 80-40091 Filed 12-23-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-C31021A; PH-FRC 1712-2]

E. I. du Pont de Nemours & Co.; Approval of Application to Conditionally Register Pesticide Product Entailing Changed Use Pattern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: E. I. du Pont de Nemours & Co., has received conditional registration for the pesticide product VELPAR weed killer, which contains 90 percent of the active ingredient 3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione permitting a significant change in the use pattern from noncrop use to crop use for the control of weeds in sugarcane.

FOR FURTHER INFORMATION CONTACT:

Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St. SW., Washington, D.C. 20460. (202-755-1397).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of October 2, 1978 (43 FR 45474) that E. I. du Pont de Nemours & Co., Wilmington, DE 19898 had submitted an application to the EPA to amend the registration of the pesticide VELPAR weed killer (EPA Reg. No. 352-378), containing the active ingredient 3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione at 90 percent. The application proposed that the use pattern of this pesticide product be changed from noncrop use to crop use for the control of weeds in sugarcane. The application also proposed that the product be classified for general use.

On November 17, 1980, E. I. du Pont de Nemours was granted conditional registration for the pesticide product for control of weeds in sugarcane.

The product has been assigned EPA Registration No. 352-378. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the product manager.

The data and other scientific information used to support registration, except for material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) will be available for public inspection in the Information Services Branch, Rm. EB-35, EPA, 401 M St. SW., Washington, D.C. 20460, 202-426-8850, in accordance with section 3(c)(2) of FIFRA, within 30 days after the registration date of November 17, 1980. Requests for data must be made in accordance with provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA 401 M St. SW., Washington, D.C. 20460. Such requests should: (1) Identify the product by name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(5), 92 Stat. 842, (7 U.S.C. 136)).

Dated: December 18, 1980.

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-40120 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[SWH-FRL 1713-5]

Major Abandoned Hazardous Waste Sites and Chemical Spills; Clean Up; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Public Meeting Notice.

SUMMARY: The Environmental Protection Agency will hold a public meeting on The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("Superfund Bill") to discuss plans and actions for the clean up of major abandoned hazardous waste sites and chemical spills.

DATE: Pubic Meeting: Monday, January 19, 1981, 9:00 a.m. to 12:30 p.m.

ADDRESS: Holiday Inn, Federal Center Plaza, 550 C Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Cohen at (202) 755-9685.

Marc Tipermas,

Director of the Office of Analysis and Program Division, in OWWM.

[FR Doc. 80-40135 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-30-M

[OPTS-53019; TSH-FRL 1712-6]

Premanufacture Notices; Monthly Status Report for October 1980

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to publish a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMN's) pending before the Agency and the PMN's for which the review period has expired since publication of the last

monthly summary. This is the report for October 1980.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on a specific chemical substance.

ADDRESS: Written comments to: Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, D.C. 20460, (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–210, 401 M St. SW., Washington, D.C. 20460, (202–426–3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)) requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558) and the notice of availability of the Revised Inventory was published on July 29, 1980 (45 FR 50544). The requirement to submit PMN's for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979. EPA has 90 days to review a PMN once the Agency receives it (section 5(a)(1)). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

The monthly status report published in the **Federal Register** as required under section 5(d)(3), will identify: (a) PMN's received during the month; (b) PMN's received previously and still under review at the end of the month; (c) PMN's for which the notice review period has ended during the month; and (d) chemical substances that EPA has added to the Inventory during the month. Therefore, EPA is publishing the October 1980 PMN Status Report.

Interested persons may submit written comments on the specific chemical substance no later than 30 days before the applicable notice review period ends to the Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, D.C. 20460. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–53019]" and the specific PMN number. Nonconfidential portions of the PMN's written comments received on individual PMN's, and other documents in public record may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Dated: December 18, 1980.

Edward A. Klein,

Director, Chemical Control Division.

Premanufacture Notices Monthly Status Report for October 1980

PMN No.	Identity/generic name	FR citation	Expiration date
	I. Premanufacture Notices Received During the Month		
80–272	*N*-Methyl-*N*-glucitylstearoylamide	45 FR 73128 (11/4/80)	Jan. 1, 1980.
80–273	Amines, C_{20-16} alkyldimethyl, phosphate salt	45 FR 73128 (11/4/80)	Jan. 1, 1980.
80–275	Polymer of: Tall oil fatty acid, isophthalic acid, trimethylol propane, trimellitic anhydride, methyl methacrylate, ethyl acrylate, methacrylic acid, hydroxy ethyl methacrylate.	45 FR 73132 (11/4/80)	Jan. 4, 1981.
80–276	Generic name: Styrene acrylic polymer	45 FR 71415 (10/28/80)	Jan. 4, 1981.
80–277	Generic name: Modified terpolymer of mixed alkyl acrylates	45 FR 71415 (10/28/80)	Jan. 4, 1981.
80–278	Generic name: Modified copolymer of mixed alkyl acrylates	45 FR 71415 (10/28/80)	Jan. 4, 1981.
80–279	Polymer of: 2,2-Dimethyl 1,3-propanediol; 2,2,4-trimethyl 1,3-pentanediol isophthalic acid; and fumaric acid.	45 FR 73128 (11/4/80)	Jan. 5, 1981.
80–280	Generic name: Hydrogen zeolites	45 FR 74562 (11/10/80)	Jan. 7, 1981.
80–281	Polymer of: Propylene glycol, neopentyl glycol, isophthalic acid, Empol 1022 dimeric fatty acid, trimellitic anhydride polymer.	45 FR 73131 (11/4/80)	Jan. 8, 1981.
80–282	Aminoalkanol salt, as a 25% aqueous solution	45 FR 75752 (11/17/80)	Jan. 12, 1981.
80–283	Generic name: Styrene methacrylate acrylate polymer	45 FR 74993 (11/13/80)	Jan. 13, 1981.
80–284	Generic name: Polymer of alkanediols and carbomonocylcic anhydrides	45 FR 75752 (11/17/80)	Jan. 14, 1981.
80–286	*N*(4-Diazo phenyl) morpholine hexafluorophosphate	45 FR 74993 (11/13/80)	Jan. 19, 1981.
80–287	Polymer of: Tall oil fatty acid, isophthalic acid, therephthalic acid, pentaerythritol, benzoic acid, and trimethylol propane.	In preparation	Jan. 19, 1981.
80–288	Polymer of: Soybean oil, pentaerythritol, isophthalic acid, benzoic acid, terephthalic acid.	In preparation	Jan. 19, 1981.
80–289	Amines, isopropyl, distillation residues	45 FR 75750 (11/17/80)	Jan. 21, 1981.
80–290	Amines, ethyl, distillation residues	45 FR 75750 (11/17/80)	Jan. 21, 1981.
80–291	Polymer of: Epoxy resin, bisphenol A, paraformaldehyde, dibutylamine, and diethanolamine.	In preparation	Jan. 21, 1981.
80–292	Generic name: Disubstituted carbopolycyclic derivative	In preparation	Jan. 21, 1981.
80–293	Generic name: Dimethyl alkylmethyl silicone glycol copolymer	In preparation	Jan. 25, 1981.
80–294	Generic name: Siloxane, alkoxylated aminoalkyl	In preparation	Jan. 25, 1981.
80–295	Generic name: Disubstituted nitrobenzene	In preparation	Jan. 25, 1981.
80–296	Generic name: Ethyl, substituted, (((sulfopropyl) heteropolycyclic) methyl) alkenyl heteropolycycle.	In preparation	Jan. 25, 1981.
80–297	Generic name: Ethyl, substituted, methylheteropolycycle tosylate	In preparation	Jan. 25, 1981.
80–298	Generic name: Substituted, methylheteropolycycle	In preparation	Jan. 25, 1981.
80–299	Generic name: Disubstituted benzene	In preparation	Jan. 25, 1981.
80–300	Generic name: Bis (Nitro, substituted phenyl) substituent	In preparation	Jan. 25, 1981.
80–301	Cyclohexane, 1,1'-methylene bis [4-isocyanato-, reaction products with 1,3-isobenzofurandione, polymer with 1,6-hexanediol, alpha-hydro-omega-hydroxypolyoxy [1,4-butanediyl], and (2-hydroxyethyl)-2-propenoate.	In preparation	Jan. 25, 1981.
80–302	Generic name: Modified polyester based on carbomonocyclic anhydride and alkanediols.	In preparation	Jan. 26, 1981.

Premanufacture Notices Monthly Status Report for October 1980

PMN No.	Identity/generic name	FR citation	Expiration date
I. Premanufacture Notices Received During the Month —Continued			
80-303	Generic name: Substituted alkyl peroxycarbonate	In preparation	Jan. 27, 1981.
80-304	Generic name: Alkyl substituted chlorocarbonic acid	In preparation	Jan. 27, 1981
80-305	Generic name: Elastomeric urethane	In preparation	Jan. 26, 1981.
80-306	Generic name: Urea/carbamate lacquer	In preparation	Jan. 27, 1981.
80-307	Polymer of tall oil fatty acids, neopentyl glycol, trimethylol ethane, phthalic anhydride.	In preparation	Jan. 27, 1981
80-310	Butanenitrile, 2-methyl, 2,2'-azobis	In preparation	Jan. 28, 1981.
80-311	Butanenitrile, 2-methyl, 2-amino	In preparation	Jan. 28, 1981.
80-312	*N*-Isocyanatotolyl-abietamide	In preparation	Jan. 28, 1981.
II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month			
80-189	Bisphenol A-epoxy resin, 1,4-butanediol, para amino benzioc acid, and phthalic anhydride polymer.	45 FR 54854 (8/18/80)	Nov. 2, 1980.
80-190	Copolymer from dimethyl terephthalate, alpha, omega-hydroxy terminated aliphatic hydrocarbons; and a polyalkylene glycol.	45 FR 56429 (8/25/80)	Nov. 2, 1980.
80-191	Polymer of: Methylene bis (4-4-cyclohexyl isocyanate), poly propylene glycol, hydroxy ethyl acrylate, and polyoxy propylene diamine.	45 FR 59196 (9/8/80)	Nov. 3, 1980.
80-192	Generic name: Very short oil nonoxidizing alkyd resin	45 FR 58201 (9/2/80)	Nov. 3, 1980.
80-193	Neopentyl glycol, 1,6-hexanediol, adipic acid, phthalic anhydride, and trimellitic anhydride.	45 FR 58194 (9/2/80)	Nov. 3, 1980.
80-194	2,2,4-Trimethyl-1,3-pentanediol, 1,6-hexanediol phthalic anhydride	45 FR 58194 (9/2/80)	Nov. 3, 1980.
80-195	Generic name: Substituted alkyl oxamide	45 FR 58194 (9/2/80)	Nov. 3, 1980.
80-196	Generic name: Trimethyl monocyclic ethyl alkenal	45 FR 59196 (9/8/80)	Nov. 5, 1980.
80-197	Generic name: Trimethyl monocyclic ethyl alkenol	45 FR 59196 (9/8/80)	Nov. 5, 1980.
80-198	Generic name: Styrene acrylic terpolymer	45 FR 58194 (9/2/80)	Nov. 6, 1980.
80-199	Generic name: Methyl aminoheteropolycycle	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-200	Generic name: 1-Substituted-1-(*p*-substitutedphenyl)ethane	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-201	Generic name: 1-Substituted-1-(4-(substitutedheteromonocyclic)phenyl)ethane	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-202	Generic name: 1-Substituted-1-(4-(substitutedheteromonocyclic)phenyl)ethane	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-203	Generic name: *p*-(Methylsubstituted)(substitutedbenzene), triethylammonium salt.	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-204	Generic name: 1-Substituted-4-(methylsubstituted)benzene	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-205	Generic name: 1-Methylsubstituted)-4-(substitutedheteromonocyclic)benzene	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-208	2-Oxepanone, polymer with 1,4-butanediol, 1,3-diisocyanatomethyl benzene, and (2-hydroxyethyl)-2-propenoate.	45 FR 59200 (9/8/80)	Nov. 9, 1980.
80-209	Generic name: Bis(1-polyamino-2-alkyl imidazoline)	45 FR 60006 (9/11/80)	Nov. 11, 1980.
80-210	Generic name: Bis(1-polyamino-2-alkyl imidazoline)	45 FR 60006 (9/11/80)	Nov. 11, 1980.
80-211	Generic name: Polytetramethylene glycol, aliphatic polyglycol, and alkyl diisocyanate.	45 FR 60006 (9/11/80)	Nov. 11, 1980.
80-212	Generic name: Adduct of polytetramethylene glycol, aliphatic polyglycol, aliphatic diisocyanate, and an alkyl diisocyanate.	45 FR 60006 (9/11/80)	Nov. 11, 1980.
80-213	Generic name: Halogenated copolyester resin	45 FR 60008 (9/11/80)	Nov. 16, 1980.
80-214	Generic name: Polyester of aliphatic polyols and aromatic diacids	45 FR 60009 (9/11/80)	Nov. 16, 1980.
80-215	Generic name: Styrene-acrylate copolymer	45 FR 61023 (9/15/80)	Nov. 17, 1980.
80-216	Generic name: Methyl fatty acid ester	45 FR 61021 (9/15/80)	Nov. 17, 1980.
80-217	Generic name: Aromatic trisazo dye	45 FR 61021 (9/15/80)	Nov. 18, 1980.
80-218	Generic name: Aromatic trisazo diester dye	45 FR 61021 (9/15/80)	Nov. 18, 1980.
80-219	Generic name: An aliphatic ester	45 FR 62194 (9/18/80)	Nov. 18, 1980.
80-220	Generic name: Polybasic acid ester of mixed short alkyl mono alcohol and a polyol.	45 FR 62985 (9/22/80)	Nov. 19, 1980.
80-221	Cyclohexanecarbonitrile, 1,1'azobis	45 FR 62195 (9/18/80)	Nov. 24, 1980.
80-222	Cyclohexanecarbonitrile, 1-amino	45 FR 62195 (9/18/80)	Nov. 24, 1980.
80-223	Polymer of: 1,6-Hexanediol, terephthalic acid, neopentyl glycol, trimelletic anhydride, adipic acid, and isophthalic acid.	45 FR 61019 (9/15/80)	Nov. 24, 1980.
80-224	Polymer of: Isophthalic acid, (tall fatty acid, trimelletic anhydride, terephthalic acid, neopentyl glycol, and trimethyl propane.	45 FR 61019 (9/15/80)	Nov. 24, 1980.
80-225	Generic name: Mono di, and tri esters of polybasic acids	45 FR 62985 (9/22/80)	Nov. 24, 1980.
80-226	Dimethyl 1,4-cyclohexanedicarboxylate, maleic anhydride, neopentyl glycol phthalic anhydride, trimethylol ethane polymer.	45 FR 61022 (9/15/80)	Nov. 19, 1980.
80-227	Benzoic acid fatty acids C_{16-18} unsaturated, maleic anhydride, and pentaerythritol polymer.	45 FR 61022 (9/15/80)	Nov. 24, 1980.
80-228	Benzene propanoic acid, 3,5-bis(1,1-dimethylethyl)-4-hydroxy-(1,2-dioxo-1,2-ethanediyl) bis (imino-2,1-ethandiyl) ester.	45 FR 62194 (9/18/80)	Nov. 24, 1980.
80-229	Generic name: Dichloro dimethoxy diethyl amino, azobenzene, sodium salt	45 FR 62987 (9/22/80)	Nov. 24, 1980.
80-230	Generic name: Fatty acid ester	45 FR 62898 (9/22/80)	Nov. 25, 1980.
80-231	Napthalene, 1,2,3,4-tetrahydro-1,2,4,4-tetramethyl	45 FR 62197 (9/18/80)	Nov. 26, 1980.
80-232	2-Napthalene ethanol, 5,6,7,8-tetrahydrobeta, 5,5,8,8-penta methyl	45 FR 65664 (10/3/80)	Nov. 26, 1980.
80-233	Polymer of adipic acid, benzoic acid, neopentyl glycol, phthalic anhydride, propylene glycol, trimethylol ethane, tall oil fatty acids.	45 FR 65662 (10/3/80)	Nov. 26, 1980.
80-234	Adipic acid, dimethyl 1,4-cyclohexane dicarboxylate, maleic anhydride, neopentyl glycol, phthalic anhydride, trimellitic anhydride, trimethylol ethane polymer.	45 FR 63343 (9/24/80)	Nov. 27, 1980.
80-235	2-Pyridinamine, *N, N*-dimethyl	45 FR 65034 (10/1/80)	Nov. 27, 1980.
80-236	Generic name: Aliphatic polyurethane water-borne dispersion	45 FR 63347 (9/24/80)	Nov. 27, 1980.
80-237	Generic name: Aliphatic polyurethane water-borne dispersion	45 FR 63347 (9/24/80)	Dec. 1, 1980.
80-238	Generic name: Glycerine, 1-alkanoate, 3-substituted alkanoate	45 FR 65662 (10/3/80)	Dec. 2, 1980.
80-239	2,2,4-Trimethyl-1,3-pentanediol, trimethylolpropane, succinic anhydride, adipic acid, isophthalic acid.	45 FR 63919 (9/26/80)	Dec. 2, 1980.
80-240	Generic name: Ethene-alkene-vinyl carbonyl amine polymer	45 FR 65030 (10/1/80)	Dec. 1, 1980.
80-241	Generic name: Polyurethane polyacrylic polymer	45 FR 63345 (9/24/80)	Dec. 3, 1980.
80-242	*N*(2-Hydroxypropyl)-*N*-tris(5-hydroxy-2-oxopentyl)-amonium acitate	45 FR 64245 (9/29/80)	Dec. 4, 1980.
80-243	2,2,4-Trimethyl-1,3-pentanediol, trimethylolpropane, succinic anhydride, tremellitic anhydride, adipic acid, and isophthalic acid.	45 FR 65033 (10/1/80)	Dec. 7, 1980.
80-244	1-Nitronaphthalene-6-sulfonic acid, potassium salt	45 FR 65029 (10/1/80)	Dec. 7, 1980.
80-245	1-Nitronaphthalene-7-sulfonic acid, potassium salt	45 FR 65029 (10/1/80)	Dec. 7, 1980.
80-246	Generic name: Disubstituted heptadecane	45 FR 65032 (10/1/80)	Dec. 7, 1980.
80-247	Generic name: Aliphatic diol	45 FR 65032 (10/1/80)	Dec. 7, 1980.

II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

80-248	Azelaic acid, 1,4-cyclohexanedimethanol, dimer acid, dimethylol propionic acid, methylene-bis (cyclohexyl isocyanate), neopantyl glycol, trimethylolpropane polymer.	45 FR 65033 (10/1/80)	Dec. 8, 1980.
80-249	Generic name: Aliphatic polyurethane water-borne dispersion	45 FR 65034 (10/1/80)	Dec. 9, 1980.
80-250	Propylene glycol, ethylene glycol terephthalic acid polymer, phthalic anhydride, and maleic anhydride.	45 FR 65664 (10/3/80)	Dec. 11, 1980.
80-251	Generic name: Carbomonocyclic, carbopolycyclic polyester	45 FR 69293 (10/20/80)	Dec. 11, 1980.
80-252	Generic name: Acryloxyethylheteromonocycle	45 FR 67449 (10/10/80)	Dec. 15, 1980.
80-253	Coconut fatty acids, benzoic acid, isophthalic acid, neopentyl glycol, propylene glycol.	45 FR 67450 (10/10/80)	Dec. 15, 1980.
80-254	Generic name: Dimer fatty acid polyamide	45 FR 67450 (10/10/80)	Dec. 15, 1980.
80-255	1-Octanamine, *N, N*-dimethyl-, phosphate salt	45 FR 67751 (10/14/80)	Dec. 16, 1980.
80-256	Generic name: Methylaziridinylcarbonylimino oleyl trimido diisophorone poly(propylene glycol).	45 FR 73127 (11/4/80)	Dec. 17, 1980.
80-257	Generic name: Unsaturated branced chain hydrocarbon having 10 carbon atoms.	45 FR 67761 (10/14/80)	Dec. 17, 1980.
80-258	Generic name: Unsaturated branched chain ketone having 12 carbon atoms	45 FR 67761 (10/14/80)	Dec. 17, 1980.
80-260	Generic name: Neutralized polymer of styrene, alkyl acrylates, and substituted alkyl methacrylates.	45 FR 69293 (10/20/80)	Dec. 18, 1980.
80-261	Polymer of: Palm oil, coconut oil pentaerythritol, benzoic acid, phthalic anhydride, and maleic anhydride.	45 FR 71419 (10/28/80)	Dec. 21, 1980.
80-262	Generic name: Fatty acids, esters with polyols	45 FR 71418 (10/28/80)	Dec. 21, 1980.
80-263	Linseed oil, styrene, glycerine, toluene diisocyanate	45 FR 73130 (11/4/80)	Dec. 22, 1980.
80-264	Benzenamine, [*N*-(1-methylhexylidene)-*N*'-(1-methyl butylidene)-4,4-methylene bis].	45 FR 73127 (11/4/80)	Dec. 25, 1980.
80-265	Generic name: Di (substituted alkyl) carbomonocyclic dicarboxylate	45 FR 73125 (11/4/80)	Dec. 25, 1980.
80-266	Generic name: Polymer of alkanedioic acids, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol 2,2-dimethyl 1-1,3-propanediol.	45 FR 73125 (11/4/80)	Dec. 25, 1980.
80-267	Generic name: Substituted phenol, reaction products with sulfur chloride	45 FR 72785 (11/3/80)	Dec. 28, 1980.
80-268	Generic name: Esterified polyamic acid	45 FR 70107 (10/22/80)	Dec. 28, 1980.
80-269	Generic name: Dineoalkyl ester of glycerine	45 FR 74556 (11/10/80)	Dec. 28, 1980.
80-270	Polymer of glycidyl methacrylate, hydroxy propyl methacrylate, 12-hydroxy stearic acid, methacrylic acid, methyl methacrylate polymer.	45 FR 74558 (11/10/80)	Dec. 28, 1980.

III. Premanufacture Notices for Which the Notice Review Period Has Ended During the Month: (Expiration of the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory)

80-157	Generic name: Halogenated polyimide	45 FR 51264 (8/1/80)	Oct. 4, 1980.
80-158	Polymer of: Epoxy resin, maleic anhydride, butanol, styrene, methacrylic acid	45 FR 51264 (8/1/80)	Oct. 4, 1980.
80-159	Generic name: Resin from monocarboxylic acids, polyhydric alcohols, dibasic acid anhydride, polycarboxylic acid anhydride, and a silicone resin.	45 FR 56433 (8/25/80)	Oct. 5, 1980.
80-160	Generic name: Hydrolyzed starch-poly-(acrylonitrile) copolymer	45 FR 51262 (8/1/80)	Oct. 6, 1980.
80-161	Polymer of 2,2-dimethyl; 1,3-propanediol: 2,2,4-trimethyl, 1,3-pentanediol; butendioic acid.	45 FR 51646 (8/4/80)	Oct. 6, 1980.
80-162	Generic name: Lignosulfonate reaction product with an alkenoic acid and an inorganic salt.	45 FR 51274 (8/1/80)	Oct. 6, 1980.
80-163	Generic name: Monosubstituted dialkyl aniline	45 FR 51910 (8/5/80)	Oct. 13, 1980.
80-164	Generic name: Disubstituted indole	45 FR 51910 (8/5/80)	Oct. 13, 1980.
80-165	Ethanedioic acid, di-*N*-butyl ester	45 FR 51272 (8/1/80)	Oct. 13, 1980.
80-166	Generic name: Carbocyanine dye	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-167	Generic name: Arylhydrazide	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-168	Generic name: Disubstituted pyrazoloquinazolone	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-169	Generic name: Disubstituted pyrazoloquinazolone carboxaldehyde	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-170	Zinc dibutyl dithiocarbamate dibutylamine complex	45 FR 54423 (8/15/80)	Oct. 14, 1980.
80-171	Generic name: Polyester plasticizer	45 FR 54422 (8/15/80)	Oct. 14, 1980.
80-172	Generic name: Polyisobutenyl succinic anhydride reaction products with substituted ethanol.	45 FR 52241 (8/6/80)	Oct. 14, 1980.
80-174	Generic name: Polyester reaction product with toluene diisocyanate acrylate terminated.	45 FR 52243 (8/5/80)	Oct. 15, 1980.
80-175	Generic name: Alkyd resin polymer, fatty acid, and urethane modified	45 FR 54420 (8/15/80)	Oct. 16, 1980.
80-176	Generic name: Oxirane, polymer with methyl oxirane, 1,1'-methylenebis(4-isocyanatocyclohexane), and (2-hydroxyethyl)-2-propenoate.	45 FR 54422 (8/15/80)	Oct. 19, 1980.
80-177	Generic name: Oxirane, polymer with methyl oxirane, 1,3-diisocyanatomethylbenzene, and (2-hydroxyethyl)-2-propenoate.	45 FR 54422 (8/15/80)	Oct. 19, 1980.
80-178	Generic name: Isocyanate terminated urethane prepolymer	45 FR 52445 (8/7/80)	Oct. 19, 1980.
80-179	Generic name: Polymer of mixed alkyl acrylates	45 FR 53866 (8/13/80)	Oct. 19, 1980.
80-180	Generic name: Polymer of: Carbomonocyclic carboxylic acid, alkanediol, 2,5-furandiol.	45 FR 58200 (9/2/80)	Oct. 22, 1980.
80-181	Benzenemethanaminium, *ar*-bromoethenyl-*N,N,N*,trimethylchloride (or sulfate), polymer with diethenylbenzene, diisopropenylbenzene, and 2-methyl-1,3-butadiene.	45 FR 54423 (8/15/80)	Oct. 19, 1980.
80-183	Generic name: Dimethylaminopropyl fluoroalkyl adducts	45 FR 58677 (9/4/80)	Oct. 22, 1980.
80-184	Polymer of: Castor oil fatty acid, benzoic acid, epoxy resin, fumaric acid, styrene, and *N,N*-dimethyl ethanol amine.	45 FR 56429 (8/25/80)	Oct. 28, 1980.
80-185	Generic name: Polymer of hydroxyethyl acrylate, styrene, 2-ethylhexyl acrylate, alkyl methacrylate, substituted alkyl acrylate, and alkyl mercaptan.	45 FR 58189 (9/2/80)	Oct. 28, 1980.
80-186	*N*-Methyl-2,4-dinitro-*N*-phenyl 6-(trifluoromethyl) benzeneamine	45 FR 54425 (8/15/80)	Oct. 28, 1980.
80-187	Generic name: 1-Amino-4-substituted-9,10-dihydro-9,10-dioxo-2-anthracenesulfonic acid.	45 FR 54854 (8/18/80)	Oct. 28, 1980.
80-188	Generic name: Primary amyl nitrates	45 FR 55268 (8/19/80)	Oct. 28, 1980.

PMN No.	Manufacturer	Chemical identity	FR citation
IV. New Substances Added to the Inventory During the Month			
80-33	Sherwin Williams	Vegetable oil fatty acid ester	45 FR 23509 (4/7/80).
80-68	Cook Paint and Varnish Company	Caprolactone, ethylacrylate, hydroxypropylmethyl acrylate, styrene acrylic acid polymer.	45 FR 27007 (4/22/80).
80-127	Claimed confidential business information (CBI)	Generic Name: Polymer product of an acrylate ester and a polyhydroxy compound.	45 FR 42012 (6/23/80).
80-129	General Printing and Ink, Inc., Co.	Generic Name: Poly (amide-ester) resin X2-669	45 FR 44394 (7/1/80).
80-130	General Printing and Ink, Inc., Co.	Generic Name: Poly (amide-ester) resin X2-600	45 FR 44394 (7/1/80).
80-131	Minnesota Mining and Minerals (3M)	2-[2-[4-(2-hydroxyethoxy) phenyl] ethenyl]-4, 6-bis (trichchloromethyl)-1,3,5-triazine.	45 FR 43461 (6/27/80).
80-139	CBI	Generic Name: Polymer of epon 1044, soya fatty acid, sodium carbonate, styrene, acrylic acid, di-tertiary butyl peroxide.	45 FR 46199 (7/9/80).
80-157	Du Pont	Generic Name: Halogenated polyimide	45 FR 51284 (8/1/80).
80-175	McCloskey Varnish Company of the West	Generic Name: Alkyl resins polymer, fatty acid and urethane modified	45 FR 54420 (8/15/80).

[FR Doc. 80-40121 Filed 12-23-80; 8:45 am]
BILLING CODE 6560-31-M

[OPP-180532; PH-FRL 1712-7]

Department of Agriculture; Crisis Exemption for Methyl Bromide on Kiwi Fruit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that the Plant Health Inspection Service, U.S. Department of Agriculture (USDA), has availed itself of a crisis exemption for the use of methyl bromide to fumigate approximately 108,368 pounds of kiwi fruit to treat *Pachybrachius pacificus* (Lygaeidae) and another insect of the Lygaeidae species.

DATE: Treatment began on September 24, 1980, and has ended.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-107, 401 M St. SW., Washington, D.C. 20460 (202-426-0223).

SUPPLEMENTARY INFORMATION: USDA informed EPA on September 29, 1980, that it had begun treatment on September 24, 1980, of two lots of kiwi fruit, weighing approximately 108,368 pounds, with methyl bromide at 3 pounds active ingredient for 2 hours at normal atmospheric pressure. The fumigation was to treat *Pachybrachius pacificus* (Lygaeidae) and another insect of the Lygaeidae species found in a kiwi fruit shipment at the Port of Los Angeles, California. While USDA anticipated that residues of inorganic bromine in or on kiwi fruit from the treatment would not exceed 25 parts per million, fruit samples were collected for residue analysis.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136)).

Dated: December 17, 1980.

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-40124 Filed 12-23-80; 8:45 am]
BILLING CODE 6560-32-M

[OPTS-51181; TSH-FRL 1712-8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN'S and provides a summary of each.

DATE: Written comments by January 2, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: George Bagley, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M St., SW., Washington, DC 20460 (202-426-3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50444-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of may 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim

confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register**.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the PMN submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register**.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before January 2, 1981, submit to the Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St., SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51181]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: December 18, 1980.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80–314

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. February 1, 1981.

Manufacturer's Identity. Ciba-Geigy Corp., Plastics and Additive Division, Ardsley, NY 10502.

Specific Chemical Identity. 2,4-Bis[(4-(*N*-cyano-*N*-phenylsulfonylamino)phenyl]methyl]-*N*-cyano-*N*-phenylsulfonylbenzenamine; 4,4'-methylenebis(*N*-cyano-*N*-phenylsulfonylbenezenamine); and 4,4'-methylenebis[2-[(4-(*N*-cyano-*N*-phenylsulfonylamino)phenyl)-methyl]-*N*-cyano-*N*-phenylsulfonylbenzenamine].

Use. The manufacturer states that these materials are precursors for the fabrication of high performance articles for the aerospace industry and military applications.

Production Estimates. Claimed confidential business information.

Physical Properties

Melting point—80–95°C.

Solubility—Readily soluble in most ketones and alcohols; insoluble in water.

Appearance—Light yellow granules.

Toxicity Data

Acute oral toxicity, LD_{50} (rats)—>7,000 mg/kg

Acute dermal toxicity, LD_{50} (rats)—>3,000 mg/kg

Eye irritation (rabbits)—Minimally irritating.

Skin irritation (rabbits)—Minimally irritating to intact and abraded skin.

Exposure. Manufacture. The submitter states that the manufacture for the most part takes place in a closed system and that direct worker exposure to the starting materials is not anticipated. Appropriate safety equipment is provided workers during the process.

Use. Ciba-Geigy states that consumer and commercial user exposure is non-existent.

Environmental Release/Disposal. Ciba-Geigy states that during the first three years at maximum production volume, no product release to the air, land, or water is anticipated; that in users' sites not controlled by the manufacturer, no environmental release of the product is also expected, except for minimal amounts of scrap material which will be either incinerated or buried in a sanitary landfill.

PMN 80–315

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. February 1, 1981.

Manufacturer's Identity. Ciba-Geigy Corp., Plastics and Additive Division, Ardsley, NY 10502.

Specific Chemical Identity. 4,4'-Methylenebis(*N*-cyanobenzenamine); 2,4-bis[(4-(*N*-cyanoamino)phenyl)methyl]-*N*-cyanobenzenamine; and 4,4' methylenebis[2-[(4-(*N*-cyanoamino)phenyl)methyl]-*N*-cyanobenzenamine].

Use. The manufacturer states that these materials are precursors for the fabrication of high performance articles for the aerospace industry and military applications.

Production Estimates. Claimed confidential business information.

Physical Properties

Melting point—None, polymerizes.

Solubility—Readily soluble in most ketones and alcohols; insoluble in water.

Appearance—Pale yellow powder.

Toxicity Data

Acute oral toxicity, LD_{50} (rats)—5,000 mg/kg.

Acute dermal toxicity, LD_{50} (rats)—>3,170 mg/kg.

Eye irritation (rabbits)—Slightly irritating

Skin irritation (rabbits)—Minimally irritating to intact and abraded skin.

Skin sensitization (guinea pigs)—Sensitizing potential in albino guinea pigs.

Exposure. Manufacture. The submitter states that the manufacture for the most part takes place in a closed system and that direct worker exposure to the starting materials is not anticipated. Appropriate safety equipment is provided workers during the process.

Use. Ciba-Geigy states that consumer and commercial user exposure is non-existent.

Environmental Release/Disposal. Ciba-Geigy states that during the first three years at maximum production volume, no product release to the air, land, or water is anticipated; that in users' sites not controlled by the manufacturer, no environmental release of the product is also expected, except for minimal amounts of scrap material

which will be either incinerated or buried in a sanitary landfill.

[FR Doc. 80-40123 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-31-M

[PF-210; PH-FRL 1712-3]

Dow Chemical Co.; Filing of Pesticide and Food Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that Dow Chemical Co. has filed requests with the EPA to establish a tolerance and a food additive regulation for the herbicide 3,6-dichloropicolinic acid.

ADDRESS: Written comments and inquiries should be directed to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St. SW., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by the document control number "[PF-210]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort (202-755-1397).

SUPPLEMENTARY INFORMATION: EPA gives notice that the Dow Chemical Co., U.S.A., Agricultural Products Dept., P.O. Box 1706, Midland, MI 48640, has submitted a pesticide and a food additive petition to establish tolerances and a regulation for the herbicide 3,6-dichloropicolinic acid in or on certain raw material commodities and a food item, in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

FAP 1H5280. Dow Chemical. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the herbicide 3,6-dichloropicolinic acid on the commodity milling fractions (except flour) of wheat at 5 parts per million (ppm).

PP 1F2439. Dow Chemical. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide 3,6-dichloropicolinic acid in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, forage	5
Barley, grain	1.5
Barley, straw	8
Cattle, fat, meat, and mbyp (except kidney)	0.05
Cattle, kidney	0.10
Eggs	0.05
Hogs, fat, meat, and mbyp	0.05
Horses, fat, meat and mbyp	0.05
Milk, whole	0.05
Oats, forage	5
Oats, grain	2
Oats, straw	5
Poultry, fat, meat, and mbyp	0.05
Sheep, fat, meat, and mbyp	0.05
Wheat, forage	5
Wheat, grain	1.5
Wheat, straw	8

The proposed analytical method for determining residues is by gas chromatography.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 135); 40(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: December 18, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-40122 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50514; PH-FRL 1713-2]

ICI Americas; Issuance of Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an experimental use permit to ICI Americas to use the insecticide cypermethrin [(±) a-cyano-(3-phenoxyphenyl)methyl(±)-*cis, trans*-3-(2,2-dichloro-ethenyl)-2,2-dimethylcyclopropanecarboxylate on cotton to evaluate control of various insects.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-341, 401 M St. SW., Washington, D.C. 20460, (202-755-1150).

SUPPLEMENTARY INFORMATION: EPA has issued an experimental use permit to ICI Americas, Concord Pike & New Murphy Road, Wilmington, DE 19897. This experimental use permit number 10182-EUP-19 allows the use of 900 pounds of the insecticide cypermethrin[(±) a=cyo-ro=(3 phenoxyphenyl)n methyl (±)*cis,trans*-3-(2,3-dichloroethenyl)-2,2-dimethylcyclopropane-carboxylate] on cotton to evaluate control of various insects. A total of 450 acres are involved. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Missouri, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. This permit is being issued with the limitation that all treated crops are destroyed or used for research purposes only.

Persons wishing to review the experimental use permit are referred to the Product Manager. Inquiries regarding this permit should be directed to the person given above. It is suggested that interested persons call before visiting the EPA Headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-40132 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-C31042 PH-FRL 1712-4]

National Chemsearch; Application To Conditionally Register a Pesticide Product Entailing a Changed Use Pattern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: National Chemsearch, A Division of NCH Corp., has submitted an application to conditionally register a pesticide product, HK-7, entailing a changed use pattern.

DATE: Written comments must be received by January 23, 1981.

ADDRESS: Written comments to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort (202-755-1397).

SUPPLEMENTARY INFORMATION: National Chemsearch, A Division of NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062, has submitted to the EPA an application to conditionally register the pesticide product HK-7 herbicide (EPA Reg. No. 1769-EOI) containing the active ingredients: Heavy Aromatic Naphtha at 92.17 percent, Tetrachloroacetic Acid at 3.50 percent, and Bromacil (5-bromo-3-sec-butyl-6-methyluracil) at 0.90 percent. The ingredient tetrachloroacetic acid has not previously been registered for the use sites proposed.

The product is proposed for general use on outdoor/noncropland, such as loading ramps, fence rows, railroad sidings, storage yards, parking lots, around buildings, and industrial plant sites.

Notice of approval or denial of this application to conditionally register the pesticide product will be announced in the **Federal Register.** Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136), the test data and other scientific information deemed relevant to the registration decision may be made available after approval, under provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved. Notice of receipt of this application does not indicate a decision by the agency on the application.

Interested persons are invited to submit written comments on this application. Comments may be submitted, and inquiries directed, to the Product Manager. The comments must be received on or before January 23, 1981, and should bear a notation indicating the document control number "[OPP-C31042]" and the registration number "1769–EOI." comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. The label furnished by the applicant, as well as all written comments filed pursuant to this notice, will be available for public inspection in the Product Manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(40 CFR 162.5 and 162.6).

Dated: December 18, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-40125 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[A-5-FRL 1699-3]

Proposed Extension of Prevention of Significant Deterioration Permit for Indianapolis Power and Light Co., Patriot Station

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed PSD Permit Extension.

SUMMARY: This notice solicits public comments on a proposal to grant a two year extension to the Indianapolis Power and Light Company (IPALCO) for the commencement of construction of Unit 1 the Patriot Station in Switzerland County, Indiana. USEPA is proposing this action based upon review of the request submitted by IPALCO. USEPA is soliciting public comment regarding this proposed action.

DATE: Comments on this proposed action must be received on or before January 23, 1981.

ADDRESSES: Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

The request filed by IPALCO for this action is on file at the above address. This information may be inspected and copies made during normal business hours.

FOR FURTHER INFORMATION CONTACT: Richard Clarizio, Regulatory Anaylsis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Phone: (312) 886–6035.

SUPPLEMENTARY INFORMATION: On December 14, 1979, USEPA granted IPALCO a Prevention of Significant Deterioration (PSD) permit to construct three, 650 megawatt, coal fired units at the Patriot Station in Switzerland County, Indiana. The notice announcing this approval appeared in the **Federal Register** on January 10, 1980 (45 FR 2095). The units are to be located near Patriot, Indiana along the Ohio River near mile post 516 in an area known as Mexico Bottom. On June 20, 1980, IPALCO requested from USEPA a two year extension of the date of commencement of construction of the first unit. The company's PSD permit now requires construction on Unit 1 to commence no later than June 14, 1981. If construction does not commence by that date, the company's PSD permit for the three units will become invalid. The company has requested that the date for commencement of construction be extended to June 14, 1983.

In its June 20, 1980, letter to USEPA, the company stated that, due to unforseen circumstances, it forecasts a reduction in demand for electrical generating capacity. The letter cites economic recession, mandatory thermostat settings, oil price hikes, increased availability of natural gas and other factors as reasons for the reduced demand. In support of its request that the date be extended and its current PSD permit remain effective, the company noted the expense of siting studies, land purchases, environmental studies, and engineering designs necessary to obtain new permits that would be required if the company's current permit became invalid. The company additionally noted the long history of the federal permitting process for its current PSD permit.

USEPA has reviewed IPALCO's request and is proposing to grant the request for an extension of the commencement date for Unit 1 to June 14, 1983. This extension is consistent with the authority found at 40 CFR 52.21(r)(2), 45 FR 52741 (Aug. 7, 1980). That section provides for an extension of the date for commencement of construction on the first unit of a phased construction project if a satisfactory showing is made that an extension is justified.

USEPA has not yet developed general policy guidance on what circumstances are adequate to justify an extension under § 52.21(r)(2). In the particular case of IPALCO, however, USEPA has concluded that the unforeseen reduction in consumer demand is sufficient justification for an extension of the commencement date for Unit 1. USEPA believes it would be unwise to require the company to proceed with construction absent the need for additional electrical capacity. At the same time, USEPA believes that as long as IPALCO remains committed to proceeding with the construction, it would be wasteful of both the company's and Agency's resources to invalidate the company's present PSD permit and require another PSD review of the project during the next two years. As noted, IPALCO has already gone through a prolonged permit process that resulted in a requirement for 91% control of sulfur dioxide emissions through flue-gas desulfurization methods. Because the company has indicated its intention to proceed with the project in two years and USEPA believes the company's projected reduction in demand is reasonable, USEPA has concluded an extension of the commencement date on Unit 1 is justifiable.

USEPA recognizes that the proposed extension will allow IPALCO to retain for an additional two years that portion of the sulfur dioxide PSD increments which are projected to be consumed by Unit 1. USEPA modeling show that unit 1 consumes 111.1 micrograms per cubic meter (three hour average) of an available 512 micrograms and 20 micrograms per cubic meter (twenty-four hour average) of an available 91 micrograms. As a result, that portion of the increment will be unavailable for

use by other sources during the two-year extension period.

Since this extension will affect only Unit 1 of the Patriot Station, only the consumption of PSD increment from Unit 1 is affected by this extension proposal. IPALCO has not requested an extention for UNITS 2 and 3 and, in any event, USEPA's regulation provide only for extensions of commencement dates for the first unit of a phased construction project. 40 CFR 52.21(r)(2). It should also be noted that further extensions of the commencement date for Unit 1 are unlikely.

USEPA solicits comments from the State of Indiana as to the appropriateness of the proposed extension as it may effect the desired use of the PSD increment. USEPA solicits public comment on whether any problems will arise for other sources, or surrounding States, due to IPALCO's retention of the increment during the two-year period.

Dated: November 21, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-40149 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-38-M

[ER-FRL-1714-3]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104), U.S. Environmental Protection Agency.

PURPOSE: This notice lists the environmental impact statements (EIS's) 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 December 15, 1980 to December 19, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from December 24, 1980 and will end on February 9, 1981. The 30-day review period for final EIS's as calculated from December 24, 1980 will end on January 23, 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 December 15, 1980 to December 19, 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 22, 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 Supplement

FLUORSPAR PROSPECTING, LUSK CREEK, SHAWNEE NF (DS-1): Pope County, Ill., December 15: This EIS supplements a draft EIS No. 770787 filed with CEQ on 6-24-77. The purpose of this supplement is to update the environmental process prior to preparation of the final EIS for the fluorspar prospecting in the Lusk Creek area of the Shawnee National Forest in Pope County, Illinois. Specifically, highlighted are the activities and related public involvement which may influence public response concerning the proposal identified in the draft EIS. These activities include: (1) National recreation area study, (2) land management planning, (3) Shawnee NF Charette, (4) RARE II and (5) clarification of the prospecting permits and mining lease process (USDA-FS-R9-DES-AMD-77-06). (EIS Order No. 800961.)

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

AGAT SMALL BOAT HARBOR AT NIMITZ BEACH: Guam, December 16: Proposed is the improvement of commercial and recreational boating for the Agat, Guam area at Nimitz Beach. The corps has conducted studies in cooperation with the territory of Guam and has proposed four alternative plans of improvement for detailed investigation all north of Nimitz Beach Park. The Fish and Wildlife Service is a cooperating agency (Honolulu District). (EIS Order No. 800964.)

EXTENSION: The review period for the above EIS has been extended to February 13, 1981 (No. 800964).

MISSOURI RIVER BANK STAB/NAV PROJECT, MITIGATION: Several counties in Missouri, Kansas, and Nebraska, December 17: Proposed are plans to mitigate the impacts to fish and wildlife resources resulting from construction, operation and maintenance of the Missouri River Bank Stabilization and Navigation Project located in the States of Missouri, Nebraska, Kansas and Iowa. Three alternatives to the proposed mitigation plan have been presented including the no action analysis. The U.S. Fish and Wildlife Service is a cooperating agency (Kansas City District). EIS Order No. 800967.)

EXTENSION: The review period for the above EIS has been extended to March 1, 1981 (No. 800967).

Final

WALTER F. GEORGE LAKE, LOCK AND DAM, O/M: Several counties in Georgia and Alabama, December 16: Proposed is the operation and maintenance of the Walter F. George Lake, Lock and Dam located on the Chattahoochee River between Clay County, Georgia and Henry County, Alabama. The surrounding impoundment area of the dam also includes Quitman, Stewart and Chattahoochee Counties in Georgia and Barbour and Russell Counties in Alabama. The facilities will include a powerhouse, lock dam and reservoir, including associated buildings, water quality monitors, access roads, public use areas, and boat channels. The portion of the Chattahoochee River involved extends from Columbus, Georgia to 20 miles below the dam (Mobile District). Comments made by: EPA, DOI, DOC, HEW, FERC, USDA, DOT, State agencies. (EIS Order No. 800965.)

Report

O/M, SAULT STE. MARIE, SOO LOCKS CLOSURE (REPORT): Chippewa County, Mich., December 18: This report provides supplemental information to the final supplemental EIS No. 791103 filed 10–26–79. The report discusses the closure of operation of the Soo Locks complex to approximately 31 December 1980. This action is for the 1980 season only and does not alter the conclusions reached in the EIS process (North Central Division). (EIS Order No. 800974.)

ENVIRONMENTAL PROTECTION AGENCY

Draft

Contact: RTP Library, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; (919) 541–2777.

SURFACE COATING OF METAL FURNITURE, STANDARDS: Regulatory, December 18: Proposed are standards of performance which would limit emissions of volatile organic compounds from new, modified and reconstructed facilities for surface coating of metal furniture. Various levels of control based on different technologies and degrees of efficiency are expressed as regulatory alternatives (EPA–450/3–80–007A). (EIS Order No. 800972.)

Draft

Contact: Daniel Sullivan, Region II, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007; (212) 264–1858.

OAKWOOD BEACH WATER POLLUTION CONTROL, STATEN ISLAND: New York, December 18: Proposed is the issuance of grant funds for the construction of water pollution control facilities in the Oakwood Beach, South Richmond area of Staten Island, New York. The proposed facilities will abate the discharge of raw sewage at various points along the Staten Island shoreline, eliminate the pollution of groundwater by existing failing subsurface disposal systems and permit the abandonment of approximately six package sewage treatment plants not meeting the effluent permit conditions. (EIS Order No. 800970.)

EXTENSION: The review period for the above EIS has been extended to March 13, 1981 (No. 800970).

Draft

Contact: Steve Torok, Region III, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106; (215) 597–8334.

WASTEWATER TREATMENT FACILITIES, GETTYSBURG: Adams County, Pa., December 17: Proposed is the issuance of grant monies to design and construct a regional sewerage system in the Gettysburg area of Adams County, Pennsylvania. The analysis presented includes defining existing and expected need for improved wastewater management, developing and analyzing alternative ways of meeting those needs, and investigating measures which would minimize the potential adverse impact to the resources of the Gettysburg National Park. Several alternatives are presented including structural and nonstructural measures. (EIS Order No. 800966.)

EXTENSION: The review period for the above EIS has been extended to February 10, 1981 (No. 800966).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410; (202) 755–6300.

Draft

LANDEN, DEERFIELD TOWNSHIP, MORTGAGE INSURANCE: Warren County, Ohio, December 18: Proposed is the issuance of mortgage insurance for a new construction residential project known as Landen located in Deerfield Township, Warren County, Ohio. The Landen Farm Company proposes to develop a 1,349-acre site which would have a land use pattern resulting in 2,089 single family residential units and 943 multifamily units. Three alternatives were considered (HUD–RO5–EIS–80–02(D)). (EIS Order No. 800971.)

ROSEWOOD SUBDIVISION, CEDAR HILL, MORTGAGE INSURANCE: Dallas County, Tex., December 17: Proposed is the issuance of mortgage insurance for the development of an approximate 1,030-acre, 2,500-unit subdivision known as Rosewood Subdivision in the city of Cedar Hill in southwest Dallas County, Texas. The alternatives considered include: (1) Those alternatives available to the developer and (2) those alternatives available to HUD such as accept as submitted, accept with conditions/modifications or reject the project from HUD participation (HUD–RO–1–EIS–80–9D). (EIS Order No. 800968.)

EXTENSION: Turtle Creek Subdivision, GA, published FR December 17, 1980—review extended from January 15, 1981 to January 18, 1981 (No. 800947).

CORRECTION: Sunrise Ridge Development, CO, published FR December 17, 1980—extension was published terminating on January 28, 1981 which was incorrect. The review period has been extended until January 26, 1981 (No. 800954).

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240; (202) 343–3891.

Fish and Wildlife Service

Draft

DISPOSITION/ADMINISTRATION OF CULEBRA AND CULEBRITA: Puerto Rico, December 19: Proposed is the consideration of the disposition and administration of lands declared excess by the U.S. Navy in the Islands of Culebra and Culebrita in Puerto Rico. The proposal considers transferring approximately 1,712 acres of excess lands on Culebra and about 262 acres of national wildlife refuge lands on Culebrita to the Commonwealth of Puerto Rico and/or the U.S. Fish and Wildlife Service. Six alternatives have been evaluated (DES–80–). (EIS Order No. 800975.)

EXTENSION: The review period for the above EIS has been extended to February 23, 1981 (No. 800975).

FISH AND WILDLIFE COORDINATION ACT, IMPLEMENTATION: Regulatory, December 15: Proposed is the promulgation of regulations prescribing procedures for uniform compliance with the Fish and Wildlife Coordination Act (FWCA). Such regulations are required by the President's water policy directives. Four alternatives are analyzed in terms of their projected procedural and operational (direct) effects and their effects on natural resources (indirect). Each alternative considers a different degree or level of regulation. The U.S. Department of Commerce, NOAA, NMFS is a cooperating agency for this EIS (DES 80–76). (EIS Order No. 800960.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Daniel R. Muller, Assistant Director for Environmental Technology, Nuclear Regulatory Commission, Room P–202, Washington, D.C. 20555; (301) 492–7017.

Draft

STEAM GENERATOR REPAIR, TURKEY POINT UNITS 3 AND 4: Dade County, Florida, December 19: Proposed is a program to repair six steam generators in units 3 and 4 of the Turkey Point Plant located in Dade County, Florida. Several alternatives have been evaluated and are presented for review. Additionally the NRC has included an updated safety evaluation for the proposal (Docket Nos. 50–250 and 50–251). (NUREG–0743, NUREG–0756.) (EIS Order No. 800976.)

EXTENSION: The review period for the above EIS has been extended to February 23, 1981 (No. 800976).

ALLENS CREEK NUCLEAR STATION UNIT NO. 1 (DS–2): Austin County, Texas, December 16: This EIS is the second supplement to a final EIS No. 741741 filed with CEQ on 11–19–79 which proposed the issuance of a construction permit to the Houston Lighting and Power Company for the construction of the Allens Creek Nuclear Generating Station Unit No. 1 located in Austin County, Texas. The purpose of this second supplement is to address site alternatives to the proposed Allens Creek site and a proposed means of transporting the reactor pressure vessel to the site (Docket No. 50–446, NUREG–0470 Supp. No. 2). (EIS Order No. 800963.)

EXTENSION: The review period for the above EIS has been extended to February 11, 1981 (No. 800963).

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.

Federal Aviation Administration

Final

LOS ANGELES INTERNATIONAL AIRPORT IMPROVEMENT: Los Angeles County, California, December 18: Proposed is a major improvement program for the Los Angeles International Airport (LAX) located in the city and county of Los Angeles, California. Features of the program include: (1) Rehabilitation of the south airfield complex, (2) construction of taxiways and miscellaneous improvements, (3) construction

of a new terminal I and west terminal, (4) additions and modifications to existing terminal 2, (5) construction of structures and support facilities, (6) construction of aircraft parking aprons, (7) addition of an upper level to World Way, (8) construction of new parking structures, (9) modifications to all ticketing buildings, (10) access improvements, and (11) expansion of parking lots. Comments made by: HUD, DOI, DOT, EPA, State agencies, Groups. (EIS Order No. 800973.)

Federal Highway Administration

Draft

BELLEVIEW AVENUE, CO–88, UNIVERSITY BOULEVARD TO I–25: Arapahoe and Denver Counties, Colorado, December 16: Proposed is the improvement of Belleview Avenue, CO–88, to either a four-lane parkway or an improved two-lane facility located in Arapahoe and Denver Counties, Colorado. The proposed project begins at University Boulevard on the west end and terminates in approximately 3 miles at I–25 on the east. Alternatives considered include: (1) Do nothing, (2) an improved existing alternative, (3) an improved two-lane alternative, and (4) a four-lane alternative. (FHWA–COLO–EIS–80–02–D). (EIS Order No. 800962.)

Final

WA–151, CHELAN STATION TO HUGO: Chelan and Douglas Counties, Washington, December 17: Proposed are improvements to and the reconstruction of WA–151 in Chelan and Douglas Counties, Washington. Reconstruction would begin at the south pavement seat of Beebe Bridge and follow the river for 5.3 miles to a connection with existing WA–97. Improvements would include: (1) The connection at Chelan Station, (2) installation of signals, (3) auxiliary stop lanes at railroad crossings, and (4) widening of the existing roadway above Chelan Station. Alternatives considered are: (1) Location, (2) improvement of existing facility, (3) mass transit, (4) no action, (5) postponing action (FHWA–WA–EIS–78–05–F). Comments made by: EPA, COE, DOI, USDA, DOT, State and local agencies. (EIS Order No. 800969.)

[FR Doc. 80-40290 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-37-M

[OPP-50515; PH-FRL 1713-8]

American Hoechst Corp.; Application for an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An experimental use permit application has been received from American Hoechst Corp., of Route 202–206 North, Sommerville, NJ 08876, to use the insecticide tralomethrin; [1R[1(S*)3(RS*)]]-2,2-dimethyl-3—(1,2,2,2,-tetrabromethyl) cycloporpanecarboxylic acid alpha-cyano-3(3-phenoxylphenyl)methyl ester to evaluate the control of cotton insects on cotton.

ADDRESS: Written comments in response to this application may be submitted to: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division, (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–341, 401 M St. SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee (202–755–1150).

SUPPLEMENTARY INFORMATION: American Hoechst Corp. has applied for an experimental use permit. This experimental use permit, file symbol number 8340–EUP–A, proposes the use of 60 pounds of the insecticide to control insects on cotton. It is proposed that the testing be conducted in the States of Alabama, Arkansas, Arizona, California, Georgia, Louisiana, Mississippi, North Carolina, Tennessee, and Texas.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136)).

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-40286 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-59033A; TSH-FRL 1714-2]

Polymer of: D-Glucose; Acetic Acid; Propanoic Acid, 2-Oxo; Arabinose; D-Mannose; L-Mannose, 6-Deoxy; D-Glucuronic Acid; Approval of Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 27, 1980, EPA received an exemption application for test marketing purposes from Kelco, Division of Merck and Co., Inc. The Test Marketing Exemption (TME) case number assigned to the substance was T80–38. 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: Robert W. Jones, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–208, Washington, DC 20460, (202–426–8815).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is one that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(D) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b), to permit them to manfacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present an 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 August 27, 1980, EPA received an application from Kelco, Division of Merck and Co. Inc., for an exemption from the requirements of section 5(a) and 5(b) of TSCA, to manufacture a co-polymer of D-glucose; acetic acid; propanoic acid, 2-oxo; arabinose; D-mannose; L-mannose, 6-deoxy; D-glucuronic acid for test marketing purposes.

A **Federal Register** notice published on September 18, 1980 (45 FR 62199) announced receipt of the exemption application and summarized information submitted by Kelco. The **Federal Register** notice requested comments on the appropriateness of granting the exemption. However, the agency received no public comments concerning the application. The data submitted indicates some people who come in contact with the TME substance may develop a slight allergic reaction. However, since only a small number of workers, 125, would handle the substance, and they wear protective

equipment, the possibility of this reaction occuring is expected to be minimal. Otherwise review of the TME application raised little or no concern with regard to health and environmental affects from the TME substance.

Considering both the toxicity and exposure, the Agency has determined that the manufacture, production, and use of these substances, in the manner described in the test market application, will not present any unreasonable risk to the people who come into contact with it during manufacture, processing, or use. There are no environmental concerns with the release or disposal of these substances. Thus, the Agency has decided to grant a test market exemption to the Kelco, Division of Merck Co. Inc., for the limited manufacture of the substance as 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 TME T80-38 with the following provisions:

1. That the company not exceed the production amounts specified on the test market application;

2. That worker exposure not exceed the levels specified;

3. That the company only use the TME substance for the purposes described in the Test Market application and in other contacts between EPA and the submitter;

4. That the company maintain records of customers to whom the test market substance has been given or sold and that these records may be inspected by EPA;

5. That each shipment contains a statement informing the recipient that the substance shipped may only be used for the purpose allowed in the exemption;

6. The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which indicates that the substance may present an unreasonable risk of injury to human health or the environment.

Section 5(h)(6) of TSCA requires EPA to approve or deny a test marketing exemption within 45 days of its receipt by the Agency. The 45 day period for this exemption application expired on October 11, 1980. EPA regrets the delay in approving this application. However, simultaneously with the processing of test marketing exemption applications, EPA is charged by TSCA with the task of examining a much larger number of premanufacture notices. The health and environmental implications associated with these notices are generally more significant and widespread than those associated with a test marketing exemption application, requiring EPA to preferentially allocate its very limited resources to the examination of the notices. In the near future EPA will communicate a set of informal guidelines to regulated industry that will help EPA make Test Marketing Exemption Application decisions in a more timely manner.

Dated: December 19, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-40287 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL MARITIME COMMISSION

[Docket No. 80-84]

Eagle Distributors Inc. v. Matson Navigation Company, Inc.

Notice is given that a complaint filed by Eagle Distributors, Inc. was served December 18, 1980. The complaint alleges that respondent has subjected it to payment of unreasonable and excessive freight charges in violation of section 18(a) of the Shipping Act, 1916 by virtue of assessing charges found by the Commission to be unreasonable in Docket 76-43, *Matson Navigation Company—Proposed Rate Increase in the United States Pacific Coast/Hawaii Trade.*

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 80-40159 Filed 12-23-80; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

Contract Audit of Transportation Payment Documents; Pre-Solicitation Conference

Notice is hereby given of a conference, prior to soliciation of bids, to address considerations relevant to a proposed procurement by contract of the identification of overcharges on Government paid transportation bills during FY 1982 (October 1, 1981 to September 30, 1982). It will be held at the Office of Transportation Audits, Transportation and Public Utilities Service, on January 15, 1981, at 10 a.m., Room 2006, Chester A. Arthur Building, 425 I Street, NW., Washington, DC. The conference will be devoted to an open discussion concerning the scope and method of the proposed procurement.

Those desiring further information may contact Mr. Lester H. Finotti, Jr., Chief, Special Projects, Transportation Audits Division, Transportation and Public Utilities Service, General Services Administration (202-275-1077).

Dated: December 15, 1980.

John L. Stanberry,

Acting Commissioner, Transportation and Public Utilities Service.

[FR Doc. 80-40145 Filed 12-23-80; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Committee Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of January 1981.

Community Alcoholism Services Review Committee

January 9, 7:00 p.m.—Open; January 10-11, 9:00 a.m.—Open; Bethesda Marriott Hotel, 2 Pooks Hill Road, Bethesda, Maryland 20014.

Contact: Mr. Phillip Dawes, Room 16C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2473.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) relating to alcoholism service activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: This special meeting is being held to orient new members and to address, in depth, areas relevant to the grant application review process. Included will be the review policies and procedures, program development and plans, committee recommendations and ratings, and guidelines, including review criteria.

Psychiatry Education Review Committee

January 28–30, 9:30 a.m.; Conference Room I, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.
Open—January 28, 9:30 a.m. to 11:30 a.m.
Closed—Otherwise.
Contact: Zebulon Taintor, M.D., or Susan Blumenthal, M.D., Room 9C–02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4728.
Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for physchiatric education to meet mental health services personnel needs in priority areas: services to unserved or underserved populations, geographic areas, or public mental health facilities; to develop linkages with the general health services delivery system and provide mental health training for general health services personnel; and to increase the supply of minority mental health personnel, and makes recommendations to the National Advisory Mental Health Council for final review.
Agenda: From 9:30 to 11:30 a.m. on January 28, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Mental Health Small Grant Review Committee

January 29–31, 1:30 p.m.; the Gramercy Inn, Parkview and Westview Rooms, 1616 Rhode Island Avenue, N.W., Washington, D.C. 20036.
Open—January 29, 1:30 p.m. to 2:30 p.m.
Closed—Otherwise.
LaVerl P. Klein, Room 9–104, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.
Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for research in all disciplines pertaining to alcohol, drug abuse, and mental health, including psychology, sociology, anthropology, psychiatry, and the biological sciences, and makes recommendations to the National Advisory Councils of the respective Institutes for final review.
Agenda: From 1:30 to 2:30 p.m. on January 29, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members for NIMH will be furnished by Mrs. Uvalda Dowdy, Office of the Associate Director for Extramural Programs, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–4333. For NIAAA: Ms. Helen Garrett, Committee Management Officer, Room 16C–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–2860.

Dated: December 16, 1980.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80–40050 Filed 12–23–80; 8:45 am]

BILLING CODE 4110–88–M

Office of the Assistant Secretary for Health

National Council on Health Care Technology; Subcommittee on Criteria; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Subcommittee on Criteria of the National Council on Health Care Technology (Council), which was established pursuant to the Health Research, Health Statistics, and Health Care Technology Act of 1978 (Pub. L. 95–623) and which advises the Secretary and the Director of the National Center for Health Care Technology (Center) on the activities of the Center, will convene on Friday, January 9, 1981 at 10:00 a.m. in the board room of the Milbank Memorial Fund, 1 East 75th Street, New York, N.Y. This meeting will be open to the public from 10:00 a.m. to 4:00 p.m. to discuss the business of the Subcommittee. Principal consideration will be given to further discussions regarding the processes for criteria development.

Further information regarding the Council may be obtained by contacting Sharon Paino, Executive Secretary, National Council on Health Care Technology, Room 17A–29, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: December 17, 1980.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology

[FR Doc. 80–40052 Filed 12–23–80; 8:45 am]

BILLING CODE 4110–85–M

National Center for Health Care Technology; Scientific Evaluation of Medical Technology

The National Center for Health Care Technology (Center) announces that it is beginning a scientific evaluation of the clinical safety and effectiveness of intravenous histamine therapy for Meniere's disease, acute and sudden hearing loss, and headache.

Based on this evaluation, a recommendation will be formulated to assist the Health Care Financing Administration in establishing a Medicare coverage policy. Any person or group wishing to provide the Center with information relevant to this evaluation should do so in writing on or before February 23, 1981. To enable the Center's staff to give appropriate consideration to any literature references or analysis of clinical data, a written summary no longer than 10 pages should be attached to any such material submitted.

Written material should be submitted to: National Center for Health Care Technology, Room 17A–29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

For further information contact: Stephen P. Heyse, M.D., M.P.H., Health Science Analyst, National Center for Health Care Technology, Room 171A–29, Parklawn Building, Rockville, Maryland 20857, (301) 443–4990.

Dated: December 17, 1980.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 80–40051 Filed 12–23–80; 8:45 am]

BILLING CODE 4110–85–M

Health Care Financing Administration

Pharmaceutical Reimbursement Board; Proposed MACs and Announcement of Public Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: The Pharmaceutical Reimbursement Board proposes maximum allowable cost (MAC) limits on the drugs specified below and announces a public hearing with regard to these proposed MAC limits.

DATES: Hearing—February 12, 1981 (10 a.m.–5 p.m.). End of comment period: January 30, 1981. End of period for submission of requests to appear at the hearing: January 30, 1981.

Interested persons and organizations are invited to submit in writing comments on the proposed MACs. All comments received by January 30, 1981, will be considered and will be maintained for public inspection in the office of the Pharmaceutical and Medical Services Reimbursement Branch.

A public hearing on the proposed MACs will be held on February 12, 1981. Persons or organizations wishing to make presentations must submit to the Board's Executive Secretary by January 30, 1981, at least 20 copies of the proposed oral presentation in its entirety together with all supporting studies and materials and the names and addresses of proposed participants. The Board will grant every request to appear if the presentation is relevant to the proposed MAC.

PLACE OF HEARING: Multi-Purpose Room, 1st Floor, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

FOR FURTHER INFORMATION CONTACT: Charles Spalding, Acting Executive Secretary, Pharmaceutical Reimbursement Board, 1–D–5 East Low Rise, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–5403

SUPPLEMENTARY INFORMATION: The Pharmaceutical Reimbursement Board has been established within the Health Care Financing Administration for the purpose of setting MAC limits on certain multiple source drugs for which reimbursement is provided under Medicaid, Medicare and other programs administered by the Department. In accordance with 45 CFR 19.5, the Pharmaceutical Reimbursement Board proposes the following MAC limits:

Drug and Proposed MAC Limit

Glutethimide, oral tablet, 500 mg—$0.0398 per tablet.

Phentermine HCl, oral capsule, 30 mg—$0.0395 per capsule.

Procainamide HCl, oral capsule, 250 mg—$0.0369 per capsule.

Procainamide HCl, oral capsule, 375 mg—$0.0505 per capsule.

Procainamide HCl, oral capsule, 500 mg—$0.0585 per capsule.

Propantheline Bromide, oral tablet, 15 mg—$0.0235 per tablet.

The Board originally identified these multiple source drugs as drugs for which significant amounts of Federal funds are expended and for which there are significantly different prices. The Food and Drug Administration has advised the Board that there is no regulatory action, either pending or under consideration, that would be a reason for delaying or withholding the establishment of MACs on the drugs listed above. In making the initial determination of the lowest unit price at which each of the drugs is widely and consistently available from any formulator or labeler, the Board relied on two sources; *Drug Topics Red Book* and a HCFA survey. *Drug Topics Red Book*, published annually and updated monthly, is an authoritative and recognized listing of advertised prices. The HCFA survey is a summary, updated monthly, of pharmacy invoice prices obtained by HCFA under contract with IMS America. The HCFA survey price is based on the 70th percentile of invoice prices from a panel of 1,000 pharmacies nationwide.

1. Glutethimide, Oral Tablets, 500 mg.—The Board proposes a MAC limit of $0.0398 per tablet for this form of glutethimide. The product is advertised in the *Drug Topics Red Book* as being available at or below this price by thirteen suppliers. The HCFA survey revealed that 70 percent of the invoices and units of the "all other brands" are sold at or below the $0.0398 level. Small and medium size independents have purchased "all other brands" at or below the $0.0398 level.

2. Phentermine HCl, Oral Capsules, 30 mg.—The Board proposes a MAC limit of $0.0395 per capsule for this form of phentermine. The product is advertised in the *Red Book* as being available at or below this price from ten suppliers. One approved manufacturer has given assurances that it is capable of meeting increased market demand.

3. Procainamide HCl, Oral Capsules, 250 mg.—The Board proposes a MAC limit of $0.0369 per capsule for this form of procainamide. The product is advertised in the *Red Book* as being available at or below this price from sixteen suppliers. According to the HCFA survey over 80 percent of the purchases of the "all other brands" were at or below the proposed MAC level. Small and medium size independent pharmacies have purchased the product at or below the $0.0369 per capsule level.

4. Procainamide HCl, Oral Capsules, 375 mg.—The Board proposes a MAC limit of $0.0505 per capsule for this form of procainamide. The product is advertised in the *Red Book* as being available at or below this price, from ten suppliers. According to the HCFA survey, over 80 percent of the purchases of the "all other brands" were at or below the $0.0505 per capsule level. Small and medium size independent pharmacies have purchased from the "all other brands" at or below the proposed MAC level.

5. Procainamide HCl, Oral Capsules, 500 mg.—The Board proposes a MAC limit of $0.0585 per capsule for this form of procainamide. The product is advertised in the *Red Book* as being available at or below this price from twenty-one suppliers. According to the HCFA survey, 80 percent of the purchases of the "all other brands" were at or below the $0.0585 level. Small and medium size independent pharmacies have purchased the "all other brands" at or below the proposed MAC level.

6. Propantheline Bromide, Oral Tablets, 15 mg.—The Board proposes a MAC limit of $0.0235 per tablet for this form of propantheline. According to the HCFA survey, over 90 percent of the purchases of the "all other brands" were at or below the $0.0235 per tablet level. Small and medium size independent pharmacies have purchased the "all other brands" at or below the proposed MAC limit. This product is available from Lederle, subsidiary of the 18th largest, Purepac, the 63rd largest, and McKesson, the 73rd largest ethical pharmaceutical companies in the United States. The product is advertised in the *Red Book* as being available at or below the proposed MAC level from twenty-one additional suppliers.

The FDA advice and the economic data listed above are available for inspection in the office of the Pharmaceutical and Medical Services Reimbursement Branch and a limited number of copies are available upon written request.

Dated: December 5, 1980.

Peter J. Rodler,

Acting Chairman, Pharmaceutical Reimbursement Board.

[FR Doc. 80-40299 Filed 12-23-80; 8:45 am]

BILLING CODE 4110-35-M

Office of the Secretary

Medicare Program; Premium Rate for the Uninsured Aged

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: This notice announces Medicare's monthly hospital insurance premium for the uninsured aged for the 12 months beginning July 1, 1981. Section 1818(d)(2) of the Social Security Act requires the Secretary of HHS to publish, during the last quarter of each calendar year, the amount of the monthly hospital insurance program

(Part A of Medicare) premium for voluntary enrollment for the 12-month period beginning with the following July 1.

EFFECTIVE DATE: July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Guy King, Director, Division of Medicare Cost Estimates, 3–0–3 Operations Building, Baltimore, Maryland 21235, Telephone: (301) 594–2826.

SUPPLEMENTARY INFORMATION: Under the authority in Section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2)), I have determined that the monthly Medicare hospital insurance premium for the uninsured aged for the 12 months beginning July 1, 1981, is $89.

Section 1818 of the Social Security Act provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to hospital insurance. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d)(2) of the Act requires the Secretary to determine and publish, during the last quarter of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the 12-month period beginning with the following July 1. The formula specified in this section also requires that, for the period beginning July 1, 1981, the premium must be $33 multiplied by the ratio of (1) the 1981 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of $1 or, if midway between multiples of $1, to the next higher multiple of $1.

Under section 1813(b)(2) of the Act, the 1981 inpatient hospital deductible was determined to be $204. (See 45 FR 65042, October 1, 1980.) The 1973 deductible was actuarially determined to be $76, although the 1973 deductible was actually promulgated to be only $72, to comply with a ruling of the Cost of Living Council. (See 37 FR 21452, October 11, 1972.) The monthly premium for the 12-month period beginning July 1, 1981 has been calculated using the $76 deductible for 1973, since this more closely satisfies the intent of the law. Thus the monthly hospital insurance premium is $33 × (204/76) = $88.58, which is rounded to $89.

(Sec. 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2)))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medical Hospital Insurance)

Dated: December 19, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80–40300 Filed 12–23–80; 8:45 am]

BILLING CODE 4110–35–M

Monthly Actuarial Rates and Monthly Premium Rates

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for the twelve months beginning July 1981. It also promulgates the monthly SMI premium rate to be paid by all enrollees during the twelve months beginning July 1981.

EFFECTIVE DATE: July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Guy King, Director, Division of Medicare Cost Estimates, 3–0–3 Operations Building, Baltimore, Maryland 21235, Telephone: (301) 594–2826.

SUPPLEMENTARY INFORMATION: Each December, the Secretary of Health and Human Services is required by law to promulgate two notices relating to the Medicare Supplementary Medical Insurance (SMI) program.

One notice announces two amounts that, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost of SMI per aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI per disabled enrollee (under age 65) during the 12 months beginning the following July. These amounts are called "monthly actuarial rates".

The second notice promulgates the monthly SMI premium rate to be paid by aged and disabled enrollees for the 12 months beginning the following July. (Although the costs to the program per disabled enrollee are higher than for the aged, the law provides that they pay the same premium amount.) The premium rate must be the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II social security benefits (effective the preceding June). The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The notices of these amounts for the period July 1, 1981, through June 30, 1982, are as follows:

Notice of Monthly Actuarial Rates

As required by section 1839(c) (1) and (4) of the Social Security Act (42 U.S.C. 1395r(c) (1) and (4)), as amended, I have determined that the monthly actuarial rates applicable for the 12-month period beginning July 1, 1981, are $22.60 for enrollees age 65 and over, and $36.60 for disabled enrollees under age 65. The accompanying statement gives the actuarial assumptions and bases from which these rates are derived.

Notice of Monthly Premium Rate

As required by section 1839(c)(3) of the Social Security Act (42 U.S.C. 1395r(c)(3)), as amended, I have determined that the basic premium amount will be $11.00 monthly during the period beginning July 1, 1981, and ending June 30, 1982. The accompanying statement shows how this amount was derived.

Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Standard Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning July 1981

1. Actuarial Status of the Supplementary Medical Insurance Trust Fund

The law requires that the SMI program be financed on an incurred basis. That is, program income during the 12-month period for which the actuarial rates are effective must be sufficient to pay for services furnished during that period (including associated administrative costs) even though payment for some of these services will not be made until after the close of the period. The portion of income required to cover benefits not paid until after the close of the 12-month period is added to the trust fund until needed. Thus, the assets in the trust fund at any time should be no less than benefit and administrative costs incurred but not yet paid.

Because the rates are established prospectively, they are subject to projection error. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of projection error in addition to the amount of incurred but unpaid expenses. Table 1 summarizes the estimated actuarial status of the trust fund as of June 30 for each of the years 1979–91.

Table 1.—*Actuarial Status of the SMI Trust Fund: Years Ending June 30 of 1979–81*

[In millions]

Year ending June 30	Assets	Liabilities	Assets less liabilities
1979	$4,883	$2,810	$2,073
1980	4,657	3,385	1,272
1981	3,909	3,927	−18

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate is one-half the monthly projected cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of projection error and to amortize unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for the year ending June 30, 1982, was determined by projecting per-enrollee cost for the 12-month period ending June 30, 1979, by type of service. The projected costs for the years ending June 30 of 1979–1982 are shown in Table 2. The values for the 12-month period ending June 30, 1979, were established from program data. Subsequent years were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 3.

Table 2.—*Derivation of Promulgated Monthly Rate for Enrollees Age 65 and Over Years Ending June 30 of 1979–82*

	1979	1980	1981	1982
Covered services (at level recognized):				
Physicians' reasonable charges	$12.87	$14.75	$17.36	$20.35
Radiology and pathology	.69	.78	.90	1.04
Outpatient hospital and other institutions	2.38	2.83	3.54	4.07
Home health agencies	.31	.39	.47	.54
Group practice prepayment plans	.29	.44	.52	.60
Independent lab	.19	.20	.23	.26
Total services	16.73	19.39	23.02	26.86
Cost sharing:				
Deductible	−1.79	−1.82	−1.85	−1.88
Coinsurance	−2.80	−3.29	−3.97	−4.69
Total benefits	12.14	14.28	17.20	20.29
Administrative expenses	.87	.87	.91	.98
Incurred expenditures	13.01	15.15	18.11	21.27
Value of interest on fund	−.33	−.36	−.26	−.33
Contingency margin for projection error and to amortize unfunded liabilities	.72	−1.39	−1.55	1.66
Promulgated monthly rate	13.40	13.40	16.30	22.60

Table 3.—*Projection Factors [1] Years Ending June 30 of 1980–82*

[In percent]

Year ending June 30	Physicians' services		Radiology and pathology	Outpatient hospital services	Home health agency services	Group practice prepayment plans	Independent lab services
	Fees [2]	Utilization [3]					
Aged:							
1980	8.6	5.5	14.1	16.8	24.0	52.2	1.8
1981	10.0	7.0	15.0	25.0	20.0	20.0	15.0
1982	10.6	6.0	15.0	15.0	15.0	15.0	15.0
Disabled:							
1980	8.6	9.0	29.8	20.4	16.6	51.4	9.5
1981	10.0	10.0	20.0	25.0	15.0	20.0	15.0
1982	10.6	9.0	15.0	15.0	15.0	15.0	15.0

[1] All values are per enrollee. Also, the values for 1980 and/or 1981 differ significantly from those contained in last year's promulgation notice due to an additional year's data which support the current values.

[2] As recognized for payment under the program.

[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for the 12-month period ending June 30, 1982, is $21.27. The monthly actuarial rate of $22.60 provides an adjustment for interest earnings and $1.66 for a contingency margin. This margin partially amortizes a moderately large unfunded liability for the aged.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement to disability benefits for not less than 24 months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parallel to projections for the aged, using appropriate actuarial assumptions (see Table 3). Costs for the end-stage renal disease program are projected using a computer model because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for the year ending June 30, 1982 is $39.14. The monthly rate of $36.60 provides an adjustment for interest earnings and $.10 for a contingency margin. This margin is small since there is already a more than moderate excess of assets over liabilities for the disabled.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy of the rates promulgated here using alternative assumptions. The most unpredictable factors that contribute significantly to future costs are outpatient hospital costs, physician utilization (measured indirectly and reflecting the use of more visits per enrollee, the use of more expensive sevices, and other factors not explained by simple price per service increases), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. All assumptions not shown in Table 5 are the same as in Table 3.

Table 4.—*Derivation of Promulgated Monthly Rate for Disabled Enrollees Years Ending June 30 of 1979–82*

	1979	1980	1981	1982
Covered services (at level recognized):				
Physicians' reasonable charges	$15.41	$18.17	$21.76	$25.86
Radiology and pathology	.72	.93	1.12	1.26
Outpatient hospital and other institutions	12.86	15.11	17.67	19.76
Home health agencies	.24	.26	.32	.37
Group practice prepayment plans	.17	.25	.31	.35
Independent lab	.27	.31	.35	.40
Total services	29.67	35.05	41.53	48.02
Cost sharing:				
Deductible	−1.66	−1.69	−1.72	−1.75
Coinsurance	−5.42	−6.43	−7.68	−8.93
Total benefits	22.59	26.93	32.13	37.34
Administrative expenses	1.63	1.63	1.69	1.80
Incurred expenditures	24.22	28.56	33.82	39.14
Value of interest on fund	−2.79	−3.12	−2.70	−2.64
Contingency margin for projection error and to amortize unfunded liabilities	3.57	−.44	−5.62	.10
Promulgated monthly rate	25.00	25.00	25.50	36.60

Table 5 indicates that, under the assumptions used in preparing this report, the promulgated monthly rates will result in an excess of assets over liabilities of $1,022 million by the end of June 1982. This amounts to 5.5 percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic, and therefore which indicate the degree that assets can accommodate projection errors, produce a deficit of $484 million by the end of June 1982, which amounts to a deficit of 2.3 percent of the estimated total incurred expeditures for the following year. Under fairly optimistic assumptions, the promulgated monthly rates will result in an excess of $2,464 million, which amounts to 14.5 percent of the estimated total incurred expenditures for the following year.

Table 5.—*Projection Factors and the Actuarial Status of the SMI Trust Fund Under Alternative Sets of Assumptions, Years Ending June 30 of 1981–82*

	This projection		Low assumption		High assumption	
	1981	1982	1981	1982	1981	1982
Projection factors (in percent):[1]						
Physician's fees:[2]						
Aged	10.0	10.6	9.5	9.6	10.5	11.6
Disabled	10.0	10.6	9.5	9.6	10.5	11.6
Utilization of physicians' services:[3]						
Aged	7.0	6.0	5.0	4.0	9.0	8.0
Disabled	10.0	9.0	8.0	7.0	12.0	11.0
Outpatient hospital services per enrollee:						
Aged	25.0	15.0	15.0	5.0	35.0	25.0
Disabled	25.0	15.0	15.0	5.0	35.0	25.0
Home Health Agency services per enrollee:						
Aged	20.0	15.0	10.0	5.0	30.0	25.0
Disabled	15.0	15.0	5.0	5.0	25.0	25.0
Actuarial status (in millions):						
Assets!94$3,909		$5,607	$4,222	$6,809	$3,599	$4,359
Liabilities	3,927	4,585	3,834	4,345	4,024	4,843
Assets less liabilities	−18	1,022	388	2,464	−425	−484
Ratio of assets less liabilities to expenditures (in percent)	−.1	5.5	2.6	14.5	−2.6	−2.3

[1] The values for 1981 differ significantly from those contained in last year's promulgation notice due to an additional year's data which support the current values.

[2] As recognized for payment under the program.

[3] Increased in the number of services received per enrollee and greater relative use of more expensive services.

[4] Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

5. Standard Premium Rate

The law provides that the standard monthly premium rate, promulgated to apply for both aged and disabled enrollees, shall be the lesser of:

1. The actuarial rate for enrollees age 65 and older; or

2. The current standard monthly premium, increased by the same percentage that the level of old-age, survivors, and disability insurance (OASDI) benefits has been increased since the May preceding the promulgation (and rounded to the nearer multiple of ten cents).

The standard monthly premium rate for the 12-month period ending with June 30, 1981 is $9.60. The OASDI benefit table increased 14.3 percent in June 1980. The $9.60 rate, increased by 14.3 percent and rounded to the nearer ten cent multiple, is $11.00. Since this is less than the aged actuarial rate, the standard premium rate is $11.00 for the 12 months ending with June 1982.

(Secs. 1839(c) (1), (3), and (4) of the Social Security Act (42 U.S.C. 1395r(c) (1), (3), and (4))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare Supplementary Medical Insurance)

Dated: December 22, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-40301 Filed 12-23-80; 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Environmental Impact Statement on WyCoalGas, Inc. Proposal; Public Scoping Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings..

SUMMARY: The Bureau of Land Management will hold meetings to gather information and seek assistance in defining the range of issues and concerns for the preparation of an Environmental Impact Statement for a proposal by WyCoalGas, Inc., a subsidiary of Panhandle Eastern Pipeline Company, to construct and operate a coal gasification plant 16 miles northeast of Douglas, Wyoming. The project would utilize coal transported some 54 miles from the Rochelle mine site in Southern Campbell

County and water from the LaPrele Reservoir North Platt River and deep wells. A 24-inch pipeline would be constructed from the plant site to a point near Cheyenne, Wyoming, where the gas would enter existing or proposed pipelines for transshipment to the company's existing distribution system. This notice is made in accordance with regulations of the Council on Environmental Quality for implementing the procedural provisions of the National Environmental Policy Act of 1969 to obtain suggestions and information from other agencies and persons on the scope of issues to be addressed in the Environmental Impact Statement. Comments and preparation as part of the scoping process are solicited.

DATES: Scoping meetings will be held on January 13, 14 and 15, 1981. Additional written comments may be received through January 30, 1981.

ADDRESSES: Comments should be addressed to: James S. Lambert, Project Manager. WyCoalGas EIS Team, Bureau of Land Management, Post Office Box 1828, Cheyenne, Wyoming 82001.

SUPPLEMENTAL INFORMATION: The public scoping meetings to assist in defining significant environmental issues and concerns for the preparation of an EIS will be held as follows:

Place	Date	Time	Address
Gillette, Wyoming	January 13, 1981	7:30 p.m.	Holiday Inn, I-90, South Douglas Highway 59, Gillette, Wyoming.
Douglas, Wyoming	January 14, 1981	1:30 p.m. and 7:30 p.m.	Auditorium Douglas High School, 7th and Walnut, Douglas, Wyoming.
Cheyenne, Wyoming	January 15, 1981	7:30 p.m.	Cheyenne Club Room, Hitching Post Inn, 1600 West Lincolnway, Cheyenne, Wyoming.

December 19, 1980.

Ed Hastey,

Associate Director.

[FR Doc. 80-40086 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

California Desert District Advisory Council; Call for Nominations

The Bureau of Land Management of the U.S. Department of the Interior intends to form a District Advisory Council in its California Desert District.

The purpose of this notice is to call for nominations for membership on that Council.

No advisory council was established for this district when councils were formed for other BLM districts pending completion of a study of the Bureau's organization in California. That study has been completed and a reorganization implemented.

The Council will be composed of no fewer than 10 and not more than 12 members. To provide a total membership that is balanced in terms of points of view represented and functions to be performed, at least one member shall be an elected official of general purpose government serving the area, and at least one member shall be qualified to provide advice on each of the following categories of interest: renewable resources; nonrenewable resources; recreation; environmental protection; transportation rights-of-way, or occupancy issues; wildlife; cultural resources; Native American concerns; and public-at-large. All members are expected to represent the general interest, but they should be knowledgeable in the category for which they are appointed.

Term of service will be two years. At the discretion of the Secretary of the Interior or his designee, members may be appointed to additional terms not to exceed a total of six years. All council members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for government employees.

The council normally will meet four times annually, but in no case less than once. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Establishment of this advisory council is in accordance with the Federal Land Policy and Management Act of 1976, as amended, and the Federal Advisory Committee Act.

Persons wishing to nominate individuals to serve on the California Desert District Advisory Council should send the nominee's name, address, profession and other biographic data to: District Manager, California Desert District, 1695 Spruce Street, Riverside, California, 92507, no later than January 31, 1981.

Further information may be obtained from the California Desert District Manager or from: State Director, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Dated: December 15, 1980.

Roland A. Rush,

Acting State Director.

[FR Doc. 80-40053 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Issuance of Permit

On May 16, 1980, Notice was published in the **Federal Register** (45 FR 32361), that an application had been filed with the National Marine Fisheries Sevrice, and Fish and Wildlife Service, by the USSR Ministry of Fisheries, All-Union Scientific Institute of Fisheries and Oceanography, Moscow, USSR, for a permit to take by killing 200 Pacific walrus (*Odobenus rosmarus*), 100 ribbon seal (*Phoca fasciata*), 100 larga seal (*Phoca largha*), 100 ringed seal (*Phoca hispida*), 100 bearded seal (*Erignathus barbatus*), and 50 Steller sea lion (*Eumetopias jubatus*), for the purpose of scientific research.

Notice is hereby given that on *December 5, 1980,* and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service and Fish and Wildlife Service jointly issued a Scientific Research Permit to the USSR Ministry of Fisheries for the above taking subject to certain conditions set forth therein.

The Permit and related documents are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;
Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802; and
Director, Fish and Wildlife Service, U.S. Department of the Interior, 1000 Glebe Road, North Arlington, Virginia.

Dated: December 5, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-40180 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-22-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 86F)]

Burlington Northern Inc.; Abandonment Between Eureka and Clyde, WA; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided December 18, 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 Burlington Northern Inc. of a line of railroad known as the Eureka to Clyde line extending from railroad milepost 0.00 near Eureka, WA, to railroad milepost 11.84 near Clyde, WA, a distance of 11.84 miles, in Walla Walla County, WA. A certificate of public convenience and necessity permitting abandonment was issued to the Burlington Northern Inc. Since no investigation was instituted, the requirement of § 1121.38(b) 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 (Section 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, D.C. 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required pursuant to Section 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. 80-40175 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 102)]

Chicago and North Western Transportation Company—Abandonment—Near Wisconsin Rapids and Wausau, WI

Decided: December 16, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Decision denying in part and granting in part a petition for extraordinary relief.

SUMMARY: This decision disposes of a petition seeking various forms of extraordinary relief with respect to the environmental assessment prepared in the entitled proceeding. The decision describes the procedures and timetable the Commission's Energy and Environment Branch followed in this proceeding to enable the Commission to comply with the strict statutory timeframes for deciding abandonment applications. This decision is being published to provide notice to the public that similar procedures will be followed in preparing environmental assessments in all other abandonment proceedings.

FOR FURTHER INFORMATION CONTACT: Carl Bausch, (202) 275-7916.

SUPPLEMENTARY INFORMATION: By petition filed November 28, 1980, Wisconsin Department of Transportation seeks certain extraordinary relief with respect to the environmental document prepared for this proceeding. That document, an environmental assessment which concluded, on the basis of available information, that abandonment of 61 miles of track in Wood and Marathon Counties, WI would have no environmental significance, was made available to the public through a decision served on November 10, 1980. Petitioner alleges essentially that prior to preparation of the environmental document there was insufficient coordination with the State Historical Society and the Department of Natural Resources. As a result, petitioner charges, conclusions contained in the environmental assessment are inadequately supported. Petitioner has requested that the Commission (1) require applicant, Chicago and North Western Transportation Company (C&NW), to complete its abandonment questionnaire, providing support for the conclusion that no major environmental impacts will be caused by abandonment of the line, (2) make available underlying documents which formed the basis of the environmental assessment, (3) permit interested persons to present environmental evidence during oral hearing, and (4) make available for cross-examination its environmental staff.

Background

Before addressing the issues raised by petitioner, I will describe briefly the environmental procedures followed in this proceeding. Similar environmental procedures are followed for every abandonment application.

On August 18, 1980, the Commission's Energy and Environmental Branch (Branch) received a notice that applicant intended to abandon the subject 61 mile line of railroad. On August 20, 1980, copies of applicant's notice, together with invitations to comment on environmental issues, were mailed by the Branch to a number of individuals and agencies in Wisconsin, including the State Planning Office, the Department of Natural Resources and its Fish and Wildlife Division, the State Historical Society, and the State Environmental Coordinator. The invitations alluded to the stringent decisional time limitations imposed by the Railroad Revitalization and Regulatory Reform Act of 1976 (4–R Act) and requested that comments be filed within 3 weeks of August 20, 1980. No comments were received at any time before the environmental assessment was made available to the public.

Internal procedures designed to comply with the provisions and the purposes of the 4–R Act require that an environmental assessment be forwarded to the decisionmaker on or before the 40th day after an abandonment application is filed.[1] C & NW's abandonment application was filed on September 17, 1980. On October 27, 1980, the environmental assessment prepared for this proceeding was forwarded to the decisionmaker.

[1] Under the recently adopted Staggers Act, environmental assessments prepared for abandonment applications must be forwarded to the decisionmaker on or before the 33rd day after abandonment applications are filed.

Findings

(1) Petitioner's request that applicant complete the abandonment questionnaire, providing support for the conclusion of no major environmental impacts is denied. While responses contained in applicant's questionnaire may be lacking in some particulars, I find that there has been substantial compliance with established reporting requirements. Several individuals and agencies in Wisconsin were invited to address applicant's proposal, thereby filling in any information gaps. Their failure to respond contributed, in no small measure, to the asserted inadequacy of the environmental document. Requiring applicant to compensate for this omission, assuming it could, would be excessively burdensome and serve no useful purpose.

(2) Petitioner's second point of requested relief is essentially a Freedom of Information Act request. All supporting and background information used in preparation of the environmental assessment is available for inspection at petitioner's convenience.

(3) This proceeding has been referred to oral hearing, at which any interested person may appear, in accordance with Commission rules, and offer evidence with respect to environmental matters or any other relevant areas of concern.

(4) Under the Commission's revised environmental rules (45 FR 79810 (1980)), which will apply to this proceeding, Commission staff responsible for preparing an environmental document may be cross-examined only where good cause is shown. Criticisms contained in petitioner's pleading relate almost exclusively to a lack of coordination with State agencies. The Commission, however, made every effort to include the State in the decisionmaking process. Under the circumstances, I am unable to conclude that good cause has been shown. Petitioner's request for cross-examination, therefore, is denied, but without prejudice to petitioner's seeking another determination under the revised environmental rules and in light of the expressions in this decision.

Because the issues considered and resolved here are of general applicability, I have directed that the decision be published in the **Federal Register** and be circulated through the clearinghouse procedure to every State.

It is ordered

(1) Petitioner's request that applicant complete the abandonment questionnaire is denied.

(2) Petitioner's request to inspect the environmental record is granted.

(3) Petitioner has the right to appear at oral hearing in this proceeding, in accordance with Commission rules, and offer evidence with respect to environmental matters.

(4) Petitioner's request for cross-examination of environmental staff is denied without prejudice to seeking another determination in accordance with the expressions in this decision.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40068 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: December 16, 1980.

In our decision of December 9, 1980, a 14-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 14.4-percent. Accordingly, we are authorizing that the surcharge for this traffic remain at 14-percent. All owner-operators are to receive compensation at this level.

However, we are authorizing that the surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators may be increased to 2.5-percent, that for the bus carriers to 5.4-percent, and that for United Parcel Service to 1.5-percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the **Federal Register** for publication therein.

It Is Ordered

This decision shall become effective Friday 12:01 a.m. December 19, 1980.

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

Agatha L. Mergenovich,

Secretary.

December 15, 1980.

Appendix—*Fuel Surcharge*

Base date and price per gallon, in cents (including tax)

January 1, 1979 ..... 69.5

Date of current price measurement and price per gallon (including tax)

December 15, 1980 ..... 117.7

	Transportation performed by—			
	Owner-operator [1]	Other [2]	Bus Carrier	UPS
	(1)	(2)	(3)	(4)
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	14.4	2.5	5.4	[3] 2.3
Percent surcharge allowed	14.0	2.5	5.4	[4] 1.5

[1] Apply to all truckload related traffic.
[2] Including less-than-truckload traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 61 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).
[4] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 80-40067 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29457 (Sub-No. 1)]

Illinois Central Gulf Railroad Company and Waterloo Railroad Company-Purchase (Portion)-Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application of Illinois Central Gulf Railroad Company (ICG) and Waterloo Railroad Company to acquire and operate approximately 26 miles of railroad owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Richard B. Ogilvie, Trustee) (MILW) located near Cedar Rapids and Marion in Linn County, IA. The Commission is also setting a schedule for the proceeding.

DATES: (1) Verified statements supporting or opposing the application are due January 9, 1981. (2) Verified statements from the United States Secretary of Transportation and the Attorney General of the United States

are due January 16, 1981. (3) Verified replies are due January 23, 1981.

ADDRESS: An original and 10 copies of all statements should refer to Finance Docket No. 29457 (Sub-No. 1) and be sent to: Section of Finance, Room 5414, Interstate Commerce Commission , Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson (202) 275–7245.

SUPPLEMENTARY INFORMATION: The ICG and Waterloo Railroad Company filed an application on December 8, 1980 under Section 5 of the Milwaukee Railroad Restructuring Act, 49 U.S.C. 904, for authority to acquire and operate two segments of track owned by the MILW. Located near Cedar Rapids and Marion, in Linn County, IA, the segments of trackage total about 26 miles. The application will be handled under the special procedures found in *Acquisition Procedures for Lines of Railroads*, 360 I.C.C. 623 (1980) and published as Subpart B of 49 CFR 1111 in 45 FR 6107 (1980) and published as Subpart B of 49 CFR 1111 in 45 FR 6107 (1980). In a decision in Finance Docket No. 29457, *Illinois Central Gulf Railroad Company-Petition* (not printed), decided October 20, 1980, the Commission determined that this proposed acquisition is a minor transaction.

The application has been reviewed and found to comply with the information requirements of our regulations.

The MILW's Reorganization Court, in Order No. 386 issued September 8, 1980, directed the Commission to act upon this application within 90 days from its filing. To meet this deadline, we have established the expedited schedule set forth above to apply to this proceeding.

Requests for copies of the application should be addressed to applicant's representative: John H. Doeringer, Illinois Central Gulf Railroad Company, 233 North Michigan Avenue, Chicago, IL 60601.

A copy of any statements filed should be served on applicant's representative.

It is ordered:

1. The application is accepted for consideration.

2. The parties shall comply with all provisions stated above.

3. This decision shall be effective on December 23, 1980.

Dated: December 18, 1980.

By the Commission, Gary J. Edles, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 40072 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

December 17, 1980

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before January 8, 1981.

43884, Southwestern Freight Bureau, Agent No. B–105, increased rates on roofing materials and sheathing, in carloads, from stations in Southwestern Territory to stations in Western Territory, in Supplement 90 to its Tariff ICC SWFB 2006-K, effective January 10, 1981. Grounds for relief—need for additional revenue.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40066 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Applications for Relief (Formerly Fourth Section Applications)

December 17, 1980.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. on or before January 8, 1981.

43885, Southwestern Freight Bureau, Agent No. B–101, reduced rates on asphalt and related products, in carloads, from Etter, TX to points in Southwestern and Western Territories, in Supplement 219 to its Tariff ICC SWFB 4679, effective January 8, 1981. Grounds for relief—market competition.

43886, Southwestern Freight Bureau, Agent (No. B–102), increased rates on roofing and building materials from stations in Southwestern Territory to stations in Southern Territory, in Supplement 54 to its Tariff ICC SWFB 4693, effective January 15, 1981. Grounds for relief—Need for increased revenue.

43887, Southwestern Freight Bureau, Agent No. B–103, reduced rates on plasticizers or solvents, in carloads, from Taft, LA to Oak Island, NJ, in Supplement 163 to its Tariff ICC SWFB 3038–E, effective January 13, 1981. Grounds for relief—rate relationship.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40070 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29413]

Louisville and Nashville Railroad Co.—Petition for Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343–11347

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the lease by Louisville and Nashville Railroad Company (L&N) of a segment of the Illinois Central Gulf Railroad Company (ICG) track in Owensboro, KY, from the requirement of prior Commission approval.

DATES: Exemption effective on December 15, 1980. Petitions for reconsideration of this decision must be filed no later than 20 days following this publication.

ADDRESSES: Send petitions for reconsideration to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th St. and Constitution Ave. NW., Washington, DC 20423.

(2) Petitioners' representatives:

Lyle Key, Jr., Louisville and Nashville Railroad Company, P.O. Box 32290, Louisville, KY 40232.

John H. Doeringer, Attorney for Illinois Gulf Central Railroad Company, 233 North Michigan Ave., Chicago, IL 60601.

Pleadings should refer to Finance Docket No. 29413.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson, (202) 275–7245.

SUPPLEMENTARY INFORMATION: L&N and ICG have requested that a proposed lease by L&N of a segment of ICG line be exempted from the requirement of prior Commission approval under 49 U.S.C. 11343–11347.[1]

The Proposal

The involved track is located between mileposts 40.05 and 40.63, a distance of 3,043 feet, in Owensboro, KY. The track is part of an ICG line between Fordsville and Owensboro which is under embargo due to defective track conditions and is also the subject of a pending abandonment application (Docket No. AB–43 (Sub-No. 68)). L&N has been operating over the Owensboro trackage under authority from the Commission in Service Order No. 1485, *Louisville and Nashville Railroad Company Authorized to Operate Over Tracks of Illinois Central Gulf Railroad Company*, served September 19, 1980. This Service Order became effective on September 20, 1980 and expires on December 15, 1980. ICG has informed L&N that it will not be able to resume service over the line in the foreseeable future.

[1] The lease and operation by a carrier of another carrier requires the approval and authorization of the Commission under 49 U.S.C. 11343–11347. To seek Commission approval an application must be filed in compliance with the ICC *Railroad Acquisition, Control Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures*, 49 CFR Part 1111 (1978).

L&N had previously filed a petition to exempt its proposed acquisition of the involved trackage as well as several other segments of ICG trackage. This petition (Finance Docket No. 29413) is currently pending consideration on a consolidated record with the related ICG abandonment proceeding and several other proceedings, known collectively as the L&N–ICG Coordination Project.[2] To avoid any disruption in rail service to the Owensboro industries pending the outcome of the consolidated proceeding, L&N and ICG propose to enter into a lease arrangement, which would terminate upon the issuance of a final decision in the consolidated proceeding. Because of the need for expedited action, petitioners request that the Commission issue an order exempting the proposed lease effective no later than December 15, 1980.

Rail Exemption Authority

Under 49 U.S.C. § 10505, as modified by section 213 of the Staggers Rail Act of 1980 (Pub. L. 96–448, 94 Stat. 1895 October 14, 1980), the Commission is authorized to exempt a transaction when it finds that (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. 10101(a); and (2) either the transaction is of limited scope or regulation is not necessary to protect shippers from the abuse of market power.

We believe the proposed lease satisfies the criteria of section 10505. The lease would have a *de minimis* impact on interstate commerce and our detailed scrutiny of the transaction under the criteria of 49 U.S.C. 11343 *et seq.*, is not necessary to carry out the objectives of the rail transportation policy. The proposed lease is also of limited scope because it (1) involves only a small geographic area (less than 1 mile), (2) is of short duration, (3) will not result in significantly changed rail operations or level of service, and (4) will not significantly or adversely affect shippers, other carriers, or railroad employees.

Since the proposed lease is of limited scope we need not determine whether our regulation is needed to protect shippers from the abuse of market power. We note, however, that no shipper opposed L&N's initial petition to exempt its proposed acquisition of the involved trackage. It is, therefore, unlikely that any shipper would object to our exemption of the proposed temporary lease.

Labor Protection. In granting an exemption under section 10505, we may not relieve a carrier of its obligation to protect the interests of employees as required by 49 U.S.C., Subtitle IV. (See 49 U.S.C. § 10505(g)(2). A lease transaction such as that proposed here is likely to have no employee impacts whatsoever. However, in accordance with section 10505(g)(2), we will afford the same level of labor protection as is usually required in lease transactions. We have determined that the employee protective conditions developed in *Mendocino Coast Ry., Inc. Lease and Operate*, 354 I.C.C. 732 (1978), as modified in 360 I.C.C. 653 (1980), satisfy the statutory requirements for protection of employees involved in a lease transaction. Therefore, the exemption will be granted subject to those protective provisions.

To avoid any disruption in rail service to the Owensboro industries, this exemption will become effective on the date of service of this decision.

Any party may file a petition to reopen this proceeding for reconsideration in accordance with Rule 98(d) of the Commission's Rules of Practice (49 CFR 1100.98(d)). Such a petition must be filed no later than 20 days following the date of publication of this decision in the **Federal Register.**

We find

(1) The application of the requirements of 49 U.S.C. §§ 11343–11347 to the proposed lease by Louisville and Nashville Railroad Company of the Illinois Gulf Central Railroad Company trackage between mileposts 40.05 and 40.63, a distance of 3,043 feet, in Owensboro, KY, is not necessary to carry out the transportation policy of 49 U.S.C. 10101a.

(2) This transaction is of limited scope.

(3) This decision will not operate to relieve any rail carrier from an obligation either (a) to provide contractural terms for liability and claims which are consistent with 49 U.S.C. 11707 or (b) to protect the interests of its employees as required by 49 U.S.C. Subtitle IV, and does not authorize intermodal ownership that is otherwise prohibited.

(4) This decision is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

It is ordered

(1) Pursuant to 49 U.S.C. 10505, we exempt from the requirements of 49 U.S.C. 11343–11347 the proposed lease by Louisville and Nashville Railroad Company of the Illinois Central Gulf Railroad Company track between mileposts 40.05 and 40.63, a distance of 3,043 feet, in Owensboro, KY, subject to the conditions for the protection of employees embodied in *Mendocino Coast Ry. Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), as modified by 360 I.C.C. 653 (1980).

(2) L&N and ICG shall have 15 days after consummation of the lease to submit three copies of a sworn statement showing all journal entries required to record the transaction.

(3) Notice of our action shall be given to the general public by delivery of a copy of this decision to the Director, **Federal Register**, for publication.

(4) The parties must consummate the transaction within 30 days of the effectiveness of this exemption in order to take advantage of the exemption.

(5) This decision shall be effective on December 19, 1980 and shall remain in force and effect until service of the decision (on the merits) in No. AB–2 (Sub-No. 29) et al.

(6) Petitions to reopen this proceeding for reconsideration of this decision must be filed no later than January 13, 1981.

Decided: December 12, 1980.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40068 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[2] The lead docket in these proceedings is AB–2 (Sub-No. 29). Oral hearings were held on November 17, 18 and 19 of this year and briefs are due on January 5, 1981.

[Docket No. AB-3 (Sub-No. 15F)]

Missouri Pacific Railroad Company—Abandonment—in Cowley Counties, KS; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a supplemental decision decided September 3, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandonment by the Missouri Pacific Railroad Company of the Conway Springs and Arkansas City Subdivision from milepost 497.2 at Dexter over the Conway Springs Subdivision to milepost 513.5 near Winfield and over the Arkansas City Subdivision to milepost 521.6 near Arkansas City, a total distance of 39.8 miles, all in Cowley County, KS, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979), and further that applicant shall keep intact all of the right-of-way underlying the track.

including all of the bridges and culverts for a period of 180 days from October 24, 1980, to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Missouri Pacific Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 15 days from the date of publication, the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. 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, D.C. 20423, no later than 10 days from publication of this Notice; and

(2) it is likely that such proffered assistance would:

(a) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 40064 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Office of Proceedings

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that appliant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 9, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before February 23, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP4-167

Decided: December 18, 1980.

By the Commission, Review Board, Number 1, Members Carleton, Joyce and Jones. Joyce not participating.

MC 35227 (Sub-19F), filed December 11, 1980. Applicant: EDSON EXPRESS, INC., 1270 Boston Ave., P.O. Box 925, Longmont, CO 80501. Representative: Richard P. Kissinger, Steele Park, Suite 330, 50 So. Steele St., Denver, CO 80209. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 143377 (Sub-5F), filed December 10, 1980. Applicant: BARRY J. WEST, d.b.a. B. J.'s SERVICE, P.O. Box 154, Lititz, PA 17543. Representative: Daniel W. Krane, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 150647 (Sub-1F), filed December 9, 1980. Applicant: MIDWEST SECURITY TRANSFER, INC., 836 No. Main, P.O. Box 1577, Sioux Falls, SD, 57101. Representative: A. J. Swanson, P.O. Box 1103, 226, N. Phillips Ave., Sioux Falls, SD 57101. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP4-170

Decided: December 18, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 153056F, filed December 8, 1980. Applicant: ALLEN W. HOPKINS, Route 2, Black Creek, WI 54160. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956. Transporting *food and other edible products (including elible byproducts,*

but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, by the owner of the motor vehicle in such vehicles, except in emergency situations, between points in the U.S.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40076 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner (b) the effect of the decision which may be rendered upon petitioner's interest (c) the availability of other means by which the petitioner's interest might be protect, (d) the extent to which petitioner's interest will be represented by other parties (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 385

Decided: December 4, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 150772F, filed May 2, 1980. Applicant: N.C.V. TRANSPORT, INC., P.O. Box 8728, Albany, NY 12207. Representative: Neil D. Breslin, 600 Broadway, Albany, NY 12207. Transporting *frozen meat,* in vehicles equipped with mechanical refrigeration, from Cohoes, NY to Kissimmee and Tampa, FL, Stockton, CA, North Baltimore and Toledo, OH, Edison, NJ, Lemont, IL, and Ayer, MA.

Volume No. 388

Decided: December 15, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 126276(Sub-212F), filed December 14, 1979, previously noticed in the FR issue of March 27, 1980, and republished

this issue. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Rd., Brookfield, IL 60513. Representative: Albert A. Andrin, 180 No. La Salle St., Chicago, IL 60601. Transporting (1) *containers, container ends, and closures,* (2) *commodities* manufactured or distributed by manufacturers and distributors of containers in mixed loads with containers, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of containers, container ends and closures, between points in the U.S., under continuing contract(s) with Boise Cascade Coroporation, of Boise, ID.

Note.—The purpose of this republication is to correctly state the territorial description.

To the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40071 Filed 12-23-80; 8:45 am]

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Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 9, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before February 23, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-133

Decided: December 12, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

FF 442 (Sub-4F), filed November 26, 1980. Applicant: C-LINE FORWARDING, INC., 340 Jefferson Blvd., Warwick, RI 02888. Representative: Ronald N. Cobert, 1730 M St. NW., Suite 501, Washington, DC 20036. As a *freight forwarder,* in connection with the transportation of *general commodities,* (1) between New York, NY, points in Nassau, Westchester, and Rockland Counties, NY, and Passaic, Essex, Union, Hudson, Middlesex, and Bergen Counties, NJ, on the one hand, and, on the other, Baltimore, MD, Alexandria, VA, points in Philadelphia, Delaware, and Montgomery Counties, PA, Camden and Gloucester Counties, NJ, Baltimore, Anne Arundel, Prince Georges, Montgomery, and Howard Counties, MD, Arlington and Fairfax Counties, VA, and DC, and (2) between points in the areas above described, on the one hand, and, on the other, points in RI, and Bristol, Suffolk, Middlesex, Norfolk, Plymouth, Essex, and Worcester Counties, MA. Condition: Coincidental cancellation, at applicant's written request of Permit No. FF-442, issued December 23, 1974, upon issuance of a permit in this proceeding.

Note.—Applicant now holds the authority requested above, but it is restricted "against the transportation of traffic having a prior or subsequent movement in foreign commerce." The purpose of this application is to remove the foreign commerce restriction.

MC 3753 (Sub-28F), filed December 3, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Rd., P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Suite 2373, One World Trade Center, New York, NY 10048. Over regular route, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Boston, MA and Manchester, NH, over Interstate Hwy 93, serving all intermediate points, and serving points in Belnap, Cheshire, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan Counties, NH as off-route points.

Note.—Applicant intends to tack this authority with its existing regular-route authority.

MC 6252 (Sub-4F), filed December 1, 1980. Applicant: TEALA'S EXPRESS, INC., 36 Laura St., Lyons Falls, NY 13368. Representative: Roy D. Pinsky, Suite 1020-State Tower Bldg., Syracuse, NY 13202. Transporting *general commoditiles* (except classes A and B explosives and household goods as defined by the Commission), between points in Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, and Oswego Counties, NY, on the one hand, and, on the other, points in Albany, Columbia, Fulton, Greene, Montgomery, Rennselaer, Saratoga, Schenectady and Schoharie Counties, NY.

MC 29883 (Sub-10F), filed December 4, 1980. Applicant: FISCHER MOTOR LINES, INC., 25585 Sherwood, Warren, MI 48091. Representative: William B. Elmer, 624 Third St., Traverse City, MI 49684. Transporting *such commodilties* as are dealt in or used by food business houses, (except commodities in bulk), between points in the U.S., under continuing contract(s) with Nabisco, Inc., of East Hanover, NJ.

MC 32882 (Sub-152F), filed November 24, 1980. Applicant: MITCHELL BROS, TRUCK LINES, a corporation, 3841 North Columbia Blvd., Portland, OR 97217. Representative: David J. Lister, P.O. Box 17039, Portland, OR 97217. Transporting *Iron and steel articles,* from points in Box Elder County, UT, to points in AZ, CA, CO, ID, MT, NV, NM, OR, WA, and WY.

MC 61403 (Sub-297F), filed December 8, 1980. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, TN 37662. Representative: W.C. Mitchell, Suite 1201, 370 Lexington Avenue, New York, NY 10017. Transporting *commodities in*

bulk, between points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 76993 (Sub-31F), filed December 4, 1980. Applicant: EXPRESS FREIGHT LINES, INC., 4924 South 13th St., Milwaukee, WI 53221. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between South Bend, IN and Toledo, OH: (a) from South Bend over U.S. Hwy 31 to junction Interstate Hwys 80/90, then over Interstate Hwys 80/90 to Toledo, and return over the same route, and (b) over U.S. Hwy 20, (2) between South Bend and Indianapolis, IN, over U.S. Hwy 31, (3) between junction Interstate Hwys 80/90 and 65, and, Columbus, IN: from junction Interstate Hwys 80/90 and 65 over Interstate Hwy 65 to junction IN Hwy 46, then over IN Hwy 46 to Columbus, and return over the same route, (4) between Lafayette, IN and Toledgo, OH: from Lafayette, over IN Hwy 25 to junction U.S. Hwy 24, then over U.S. Hwy 24 to Toledo, OH, and return over the same route, (5) between Huntington and Indianapolis, IN, over IN Hwy 37, (6) between junction Interstate Hwys 80/90 and 69, and, Indianapolis, IN, over Interstate Hwy 69, (7) between Huntington and Anderson, IN, over IN Hwy 9, (8) between Muncie, IN and junction IN Hwy 32 and Interstate Hwy 69, over IN Hwy 32, (9) between Merrillville and Ft. Wayne, IN, over U.S. Hwy 30, and (10) serving all intermediate points in routes (1) through (9) above.

Note.—Applicant proposes to tack the requested authority with all its existing authority and to interline with other existing carriers.

MC 87103 (Sub-88F), filed December 1, 1980. Applicant: MILLER TRANSFER AND RIGGING CO., a corporation, P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440. Transporting (1) *switchgear, circuit breakers and parts for switchgear and circuit breakers*, and those commodities which, because of size or weight, require the use of special equipment or special handling, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between points in Greenwood County, SC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 111812 (Sub-748F), filed December 2, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: R. H. Jinks (same address as applicant). Transporting *confectionery*, between points in McLean County, IL, on the one hand, and, on the other, points in the U.S.

MC 115162 (Sub-549F), filed December 2, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacture of radios, televisions and recording and phonographic equipment, between points in the U.S., restricted to traffic originating at or destined to the facilities used by the Zenith Radio Corporation.

MC 116632 (Sub-29F), filed December 8, 1980. Applicant: H. O. BOUCHARD, INC., MRC Box 141 A, Bangor, ME 04401. Representative: John R. McKernan, Jr., P.O. Box 586, Portland, ME 04112. Transporting *coal* from points in KY, PA, VA, and WV, to points in ME and NH.

MC 125433 (Sub-450F), filed December 5, 1980. Applicant: F–B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *machinery, except electrical*, and (2) *electrical machinery or equipment*, as described in Items 35 and 36 of the Standard Transportation Commodity Code Tariff, between Hutchinson, KS, on the one hand, and, on the other, points in the U.S.

MC 125433 (Sub-451F), filed December 5, 1980. Applicant: F–B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *machinery, except electrical*, and (2) *electrical machinery or equipment, and (3) transportation equipment*, as described in Items 35, 36, and 37, respectively, of the Standard Transportation Commodity Code Tariff, between City of Industry, CA, Calhorn, GA, Byran, OH, and, on the one hand, and, on the other, points in the U.S.

MC 142603 (Sub-36F), filed December 5, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. Transporting (1) *paper*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of paper, between points in the U.S., under continuing contract(s) with Jay Paper Sales, of Havertown, PA.

MC 144693 (Sub-7F), filed December 4, 1980. Applicant: GLENN'S TRUCK SERVICE, INC., No. 1 Produce Row, St. Louis, MO 63102. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), between points in IN, on the one hand, and, on the other, points in MO, CA, OR, WA, AZ, UT, CO, and MT, restricted to traffic originating at or destined to the facilities of RCA Corporation.

MC 144922 (Sub-6F), filed December 5, 1980. Applicant: ATF TRUCKING CO., INC., Rt. 11 Box 507–B, Birmingham, AL 35210. Representative: John W. Cooper, P.O. Box 56, Mentone, AL 35984. Transporting (1) *Citrus Products* from the facilities of Nature's Best Food Products, Inc., at Shenadore, GA, and points in FL, to points in U.S. (except AK and HI) (2) *Materials, supplies, equipment, and machinery* in the reverse direction.

MC 146782 (Sub-35F), filed December 4, 1980. Applicant: ROBERTS CONTRACT CARRIER CORPORATION, 300 First Avenue, South, Nashville, TN 37201. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Building, Nashville, TN 37201. Transporting *iron and steel articles*, having a prior or subsequent movement by water, between points in TN, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MS, NC, SC, TN and VA.

MC 148833 (Sub-5F), filed December 2, 1980. Applicant: REBEL EXPRESS, INC., Box 98, Dawson, IA 50066. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *such commodities* as are dealt in by retail drug, variety, and department stores, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Ardan, Inc.

MC 150183 (Sub-4F), filed December 5, 1980. Applicant: CASSCO REFRIGERATED TRANSPORT, DIVISION OF CASSCO CORPORATION, 125 W. Bruce St., Harrisonburg, VA 22801. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting *foodstuffs, and materials and supplies used in the manufacture, and distribution of foodstuffs* (except commodities in bulk) between Timberville, VA, on the one hand, and, on the other, points in NC and SC.

MC 152902 (Sub-1F), filed December 2, 1980. Applicant: LCT CALIFORNIA CHARTER COACH COMPANY, INC.,

21243 Ventura Blvd., Woodland Hills, CA 91364. Representative: Herbert D. Warren (same address as applicant). Transporting *passengers and their baggage* in the same vehicle or separate vehicles, in round-trip charter operations, from points in CA, to points in AZ, NV, and UT.

MC 153023F, filed December 4, 1980. Applicant: HARMONY TRAVEL, INC., 950 Jericho Turnpike, Westbury, NY 11590. Representative: William Sheinker (same address as applicant). As a *broker*, to arrange for the transportation of *passengers and their baggage*, between points in the U.S. (including AK and HI).

Volume No. OP4–162

Decided: December 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 70557 (Sub-41F), filed December 8, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 So. LaSalle St., Chicago, IL 60603. Transporting *containers and container closures*, and *materials, equipment, and supplies* used in the manufacture and distribution of containers and container closures (except in bulk), between those points in the U.S. in and east of MN, IA, MO, OK, and TX.

MC 76266 (Sub-140F), filed December 5, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *insulating materials, and supplies and equipment* used in the manufacture of insulating materials, between the facilities of Poly Therm Industries, Inc. at points in Douglas County, WI, on the one hand, and, on the other, points in the U.S.

MC 78947 (Sub-22F), filed December 8, 1980. Applicant: ELLIOTT BROS. TRUCK LINE, INC., P.O. Box 310, Dysart, IA 52224. Representative: Stanley C. Olsen, Jr., 7400 Metro Blvd. Suite 411, Edina, MN 55435. Transporting (1) *such commodities* as are dealt in or used by hardware business houses, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Craighead and Randolph Counties, AR, Los Angeles County, CA, Black Hawk County, IA, Pettis County, MO, and Clackamas and Multomah Counties, OR, on the one hand, and, on the other, points in the U.S.

MC 99746 (Sub-3F), filed December 9, 1980. Applicant: JEFFERSON TRUCK LINE, INC., 725 Girod St., New Orleans, LA 70130. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting (1) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts, and (2) *machinery, materials, equipment, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, between points in LA. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation at applicant's written requests of its Certificate of Registration under MC–99746 (Sub 1).

MC 107006 (Sub-13F), filed December 8, 1980. Applicant: THOMAS KAPPEL, INC., P.O. Box 1408, Springfield, OH 45501. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. Transporting *paper and paper products*, and *materials, equipment, and supplies* used in the manufacture of paper and paper products (except commodities in bulk), between Urvana and Dayton, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 11727 (Sub-8F), filed December 8, 1980. Applicant: JAMES H. RUSSELL, INC., Three Rocky Hill Rd., Smithfield, RI 02917. Representative: Zoe Ann Pace, Suite 2373, One World Trade Center, New York, NY 10048. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in New London County, CT, on the one hand, and, on the other, points in CT, DE, MD, NH, NJ, NY, MA, ME, PA, VA, RI, VT, and DC.

MC 143607 (Sub-31F), filed December 9, 1980. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Dr., Waco, TX 76706. Representative: Arthur W. Grimes (same address as applicant). Transporting *plastic bottles and containers*, between points in the U.S., under continuing contract(s) with Cutler Plastics of Texas Corporation of Houston, TX.

MC 143956 (Sub-24F), filed December 8, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, 3574 Piedmont Rd., Atlanta, GA 30305. Transporting *welding materials*, between Troy, OH, on the one hand, and, on the other, points in the U.S.

MC 145067 (Sub-8F), filed December 2, 1980. Applicant: LAWRENCE SPAIDE, INC., P.O. Box 111, Avoca, PA 18640. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in OH, CT, PA, NY, and NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI) restricted to traffic originating at or destined to the facilities used by Northeastern Pennsylvania Shipper's Cooperative Association, Inc. or its members.

MC 146087 (Sub-2F), filed December 8, 1980. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" St., Omaha, NE 68127. Representative: Donald L. Stern, 7171 Mercy Rd., Suite 610, Omaha, NE 68106. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Edward Hines Lumber Company, of Chicago, IL.

MC 146646 (Sub-133F), filed December 8, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting (1) *home heating and air conditioning equipment*, and *outdoor recreational equipment*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of the Coleman Company, Inc.

MC 146646 (Sub-134F), filed December 9, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: J. W. Segrest (same address as applicant). Transporting (1) *canned and bottled foodstuffs*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Bruce Foods.

MC 150166 (Sub-1F), filed December 8, 1980. Applicant: ROCKY MOUNTAIN TRUCKING CO., 4137 First Avenue South, Billings, MT 59101. Representative: James P. Murphy, 2508

Third Ave. N, Billings, MT 59101. Transporting: *meats, meat products, and meat by products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* between points in Yellowstone County, MT, on the one hand, and, on the other, points in the U.S.

MC 152237 (Sub-1F), filed December 8, 1980. Applicant: STEINBECKER BROS., a Corporation, P.O. Box 852, Greeley, CO 80632. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. Transporting (1) *meats, meat products, meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carriers Certificates,* 61 M.C.C. 209 and 766, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Sterling Colorado Beef Company, of Sterling, CO, Monfort of Colorado, Inc., of Greeley, CO, Barkely Meat Company, of South Lake Tahoe, CA, and Iowa Meat Distributors, Inc., of Beaverton, OR.

MC 153017F, filed December 8, 1980. Applicant: CASINO TOURS, INC., 114 Meadow View Dr., Newtown, PA 18940. Representative: Alan R. Squires, Esq., 818 Widener Bldg., 1339 Chestnut St., Philadelphia, PA 19107. To operate as a *broker* at Newtown, PA, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in special and charter operations, beginning and ending at points in PA, NJ, MD, DE, and DC, and extending to points in the U.S. (including AK but excluding HI).

MC 153027 (Sub-2F), filed December 5, 1980. Applicant: SOUTH CENTRAL EXPRESS, INC., 160 N. Perkins Ave., Memphis, TN 38117. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. Transporting *such commodities* as are dealt in by hobby shops and ceramic dealers, between Memphis, TN, Alton, IL, Talladega, AL, Jacksonville, FL, and Bangor, ME, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 153066F, filed December 5, 1980. Applicant: RONALD L. REAM, d.b.a. DARE TRANSPORTATION CO., P.O. Box 244, West Mifflin, PA 15122. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with William M. Orr Company and J. Allan Steel Company, Inc., both of Pittsburgh, PA.

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Decided: Dec. 18, 1980.

By the Commission Review Board Number 1, Members Carleton, Joyce and Jones. Member Joyce not participating.

MC 13267 (Sub-5E), filed December 8, 1980. Applicant: MOUNTAINSIDE TRANSPORT, INC., 4828 Hollins Ferry Rd., Baltimore, MD 21227. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Transporting *such commodities* as are dealt in or used by (a) grocery, food, drug and liquor business houses, and (b) department stores, between points in the U.S., under continuing contract(s) with The Great Atlantic & Pacific Tea Co., Inc., Super Market Service, Inc., and Plus Discount Foods, Inc., all of Montvale, NJ.

MC 29647 (Sub-48F), filed December 11, 1980. Applicant: CHARLTON BROS. TRANSPORTATION COMPANY, INC., P.O. Box 2097, Hagerstown, MD 21740. Representative: John Fullerton, 407 No. Front St., Harrisburg, PA 17105. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in MD, VA, WV, DE, NJ, NY, PA, and DC.

MC 66886 (Sub-87F), filed December 9, 1980. Applicant: BELGER CARTAGE SERVICE, INC., 2100 Walnut St., Kansas City, MO 64108. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. Transporting machinery contractors' materials, supplies and equipment, between points in the U.S.

MC 74416 (Sub-27F), filed December 8, 1980. Applicant: LESTER M. PRANGE, INC., Box 1, Kirkwood, PA 17536. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St. NW., Washington, DC 20005. Transporting *materials, equipment and supplies* used in the manufacture of iron and steel articles (except commodities in bulk), between the facilities of Crucible, Inc., Division of Colt Industries, at Midland, PA, on the one hand, and, on the other, points in NY, NJ, DE, MD, and DC.

MC 76266 (Sub-141F), filed December 9, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between the facilities of National Presto Industries, Inc., at points in Madison County, MS, on the one hand, and, on the other, points in the U.S.

MC 107456 (Sub-26F), filed December 9, 1980. Applicant: HARRY L. YOUNG AND SONS, INC., 542 West Sixth So., Salt Lake City, UT 84104. Representative: Lon Rodney Kump, 333 East Fourth So., Salt Lake City, UT 84111. Transporting *steel articles,* from the facilities of the Nucor Steel Plant, at points in Box Elder County, UT, to points in AZ, CA, CO, ID, MT, NV, NM, OR, WA, and WY.

MC 111856 (Sub-15F), filed December 9, 1980. Applicant: CHOCTAW TRANSPORT, INC., 800 Bay Bridge Rd., Prichard, AL 36610. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. Transporting *such commodities* as are dealt in or used by manufacturers of chemicals, textiles, wood products, and paper and paper products, between points in Mobile, Washington, Escambia, Choctaw and Chickasaw Counties, AL, on the one hand, and, on the other, points in LA.

MC 113106 (Sub-100F), filed December 11, 1980. Applicant: THE BLUE DIAMOND COMPANY, a corporation, 4401 E. Fairmont Ave., Baltimore, MD 21224. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St. NW., Washington, D.C. 20005. Transporting (1) *flour and materials and supplies* used in the distribution of flour, between Buffalo, NY, on the one hand, and, on the other, points in NJ, PA, MD, WV, VA, and DC and (2) *alcoholic beverages and materials and supplies* used in the manufacture and distribution of alcoholic beverages, between points in the U.S. in and east of MN, IA, MO, OK, and TX, restricted to traffic originating at or destined to the facilities of Joseph E. Seagram & Sons, Inc.

MC 115767 (Sub-5F), filed December 9, 1980. Applicant: TERMINAL TRANSFER, INC., 3601 N.W. Yeon Ave., Portland, OR 97210. Representative: Richard A. Ryles, 3601 N.W. Yeon Ave., Portland, OR 97210. Transporting *sand,* from Longview, WA, to Portland, OR.

MC 136087 (Sub-7F), filed November 16, 1980. Applicant: J.C. TRUCKING, INC., 5085 Harlan, Denver, CO 80212. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. under continuing

contract(s) with Mountain States Telephone & Telegraph—Mountain Bell of Denver, CO.

MC 138807 (Sub-17F), filed December 9, 1980. Applicant: ZIP TRUCKING, INC., P.O. Box 6126, Jackson, MS 39208. Representative: K. Edward Wolcott, P.O. Box 872, Atlanta, GA 30301. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Rockwell International Corp., of Memphis, TN.

MC 139006 (Sub-23F), filed December 8, 1980. Applicant: RAPIER SMITH, R.R. 5, Loretto Rd., Bardstown, KY 40004. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX, restricted to traffic originating at or destined to the facilities used by Plough, Inc. and its subsidiaries.

MC 139206 (Sub-79F), filed December 8, 1980. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Dr., Maryland Heights, MO 63043. Representative: Laura C. Berry (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S., under continuing contract(s) with Anaconda Brass Division, Anaconda Industries (renamed Anaconda Metal Hose, Anaconda Industries), of Mattoon, IL, Mead Johnson Terminal, Inc., of Evansville, IN, and Sangamon Company, of Taylorville, IL. Condition: Issuance of a Permit in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of MC–139206 Sub-60F), M–139206 (Sub–65F), and MC–139206 (Sub–70F).

MC 141867 (Sub-24F), filed December 5, 1980. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting *such commodities* as dealt in or used by the manufacturers of silicon metals, ferosilicon, silica, silex, colloidal silica and amorphus silica, between points in Chelan and Douglas Counties, WA on the one hand, and, on the other, points in CA, CO, ID, MT, NV, OR, and UT.

MC 144606 (Sub-18F), filed December 8, 1980. Applicant: DUNCAN & SON LINES, INC., 714 East Baseline Rd., Buckeye, AZ 85326. Representative: Donald W. Powell, 4150 North 12th St., Phoenix, AZ 85014. Transporting *plastic and plastic articles*, from Monrovia, CA, to points in CO, LA, NV, TX, and UT.

MC 146146 (Sub-11F), filed December 8, 1980. Applicant: HADDAD TRANSPORTATION, INC., 5000 Wyoming Ave., Dearborn, MI 48126. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440. Transporting *general commodities*, (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Busy Beaver Building Centers, Inc., of Pittsburgh, PA.

MC 146536 (Sub-11F), filed November 17, 1980, previously noticed in the FR issue of December 2, 1980, and republished this issue. Applicant: WALTER SHORT AGENCY, INC., 5000 Wyoming, Dearborn, MI 48126. Representative: John C. Scherbarth, 22375 Haggerty Rd. P.O. Box 400, Northville, MI 48167. Transporting *tractors, tractor parts, and tractor implements*, (1) between points in Macomb County, MI on the one hand, and, on the other, points in NC, SC, KY, TN, GA, FL, AL, MS, LA, AR, and TX, and (2) between points in Wayne County, MI, on the one hand, and, on the other, points in AL, NC, SC, MD, NY, NJ, VA, FL, and GA. Note: The purpose of this republication is to correctly state the territorial description in (2).

MC 146767 (Sub-1F), filed December 9, 1980. Applicant: GREEN'S MOVING & STORAGE, INC., 1115 E. New York St., P.O. Box 649, Rapid City, SD 57709. Representative: G. M. Green, Sr. (same address as applicant). Transporting *household goods* as defined by the Commission, between points in SD, ND, MN, IA, IL MO, KS, NE, CO, WY, MT, OK, TX, AR, NM, UT, and WI.

MC 148966 (Sub-4F), filed December 9, 1980. Applicant: DROTZMANN, INC., P.O. Box 667, Yankton, SD 57078. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) from the facilities of Terminal Freight Cooperative Association, at Columbus, OH to Los Angeles, CA, Portland, OR, and Seattle, WA, and (2) from the facilities of Terminal Freight Cooperative Association, at Los Angeles, CA to Eugene, OR.

MC 149026 (Sub-18F), filed December 5, 1980. Applicant: TRANS-STATES LINES, INC., 633 Main St., Van Buren, AR 72956. Representative: Larry C. Price, P.O. Box 1486, Van Buren, AR 72956. Transportation (1) *fabricated metal products* (except ordnance), (2) *machinery*, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between Kerrville, Center Point, Houston, San Antonio, and Tyler, Tx, on the one hand, and, on the other, points in the U.S.

MC 150776 (Sub-2F), filed December 11, 1980. Applicant: ALFRED DANIELS, INC., Rt. 1, P.O. Box 272–I, Jackson, OH 45640. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. Transportation *building materials*, between points in the U.S., under continuing contract(s) with Stonhard, Inc., of Maple Shade, NJ.

MC 151717 (Sub-1F), filed December 5, 1980. Applicant: MONTREAL CONTAINER TERMINALS, INC., 6360 Notre-Dame Street East, Montreal Quebec, Canada HIN 2E1. Representative: Adrien Paquette, 200 St.-Jacques Streef West, S.900, Montreal, Quebec, Canada H2Y IM3. In foreign commerce only, transporting *general commodities and empty containers* (except commodities of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in NY, NJ, VT, and MA, restricted to traffic having a prior or subsequent movement by water.

MC 153096F, filed December 9, 1980. Applicant: GRC TRUCKING, INC., 1525 South 10th Street, Goshen, IN 46526. Representative: Paul D. Borghesani, Katz & Borghensani, 300 Communicana Bldg., 421 South Second Street, Elkhart, IN 46516. Transporting *general commodities* (except classes A and B explosives and household goods) between points in the U.S. under continuing contract(s) with Goshen Rubber Companies, Inc., of Goshen, IN, and its subsidiaries.

MC 153116F, filed December 8, 1980. Applicant: JAMES T. EVANS TRUCKING, P.O. Box 744, Sumner, WA 98390. Representative: James T. Evans (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods) between points in the

U.S., under continuing contract(s) with American Manufacturing Company, Inc., of Tacoma, WA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40077 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of exisiting motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications will be *rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and factilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(*l*). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277.

Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 95540 (Sub-1038F) (M1F) (Notice of filing of petition to modify certificate) filed August 6, 1979. Petitioner: WATKINS MOTOR LINES, INC., 144 West Griffin Rd., Lakeland, FL 33801. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Petitioner hold a motor *common carrier* certificate in MC-95540 Sub 1038F, issued June 25, 1979, authorizing transportation, over irregular routes, transporting foodstuffs (except in bulk, in tank vehicles) in vehicles equipped with mechanical refrigeration, from points in CT, MA, NJ, NY, and PA, to points in AL, FL, MS, NC, SC, TN and VA. By the instant petition, petitioner seeks to modify the above certificate by removing the language "in vehicles equipped with mechanical refrigeration."

MC 144041 (M1F) (Notice of filing of petition to modify certificate) filed May 19, 1980. Petitioner: DOWNS TRANSPORTATION CO., INC., 1555 Industrial Blvd., Conyers, GA 30207. Representative: K. Edward Wolcott, Peachtree Center, 1200 Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. Petitioner holds motor *common carrier* certificate in MC-144041 issued September 21, 1979, authorizing transportation, over irregular routes, transporting (1) *chemicals*, (except in bulk), from Decatur and Conyers, GA, to points in the U.S. (except AK and HI), restricted to traffic originating at the facilities of Bio-Lab, Inc., at the named origins, and (2) *materials, equipment, and supplies* used in the manufacture, sale and distribution of chemicals (except in bulk), from points in the U.S. (except AK and HI) to Decatur and Conyers, GA, restricted to traffic destined to facilities of Bio-Lab, Inc., at the named destinations. By the instant petition, petitioner seeks to modify the above certificate be deleting the facility restrictions in (1) and (2) above.

MC 144041 (Sub-15F) (M1F) (Notice of filing of petition to modify certificate) filed May 6, 1980. Petitioner: DOWNS TRANSPORTATION CO., INC., 1555 Industrial Blvd., Conyers, GA 30207. Representative: K. Edward Wolcott, Peachtree Center, 1200 Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. Petitioner holds a motor *common carrier* certificate in MC-144041 Sub 15F, issued August 15, 1979, authorizing transportation, over irregular routes, transporting *plastic articles and materials* (except in bulk) between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Mobile Chemical Company, Plastics Division. By the instant petition, petitioner seeks to modify the above certificate by deleting the facility restriction.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40065 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of

Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed by February 9, 1981 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Decided: December 16, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams. (Board Member Taylor votes to deny the request for gateway elimination.)

MC 93682 (Sub-21F), filed October 1, 1980. (Supplemental Publication) (Previously published in the **Federal Register** on October 23, 1980). Applicant: COLES EXPRESS (Gateway Elimination), 444 Perry Road, Bangor, ME 04401. Representative: John F. O'Donnell, 60 Adams Street, P.O. Box 238, Milton, MA 02187. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except commodities which because of size or weight require the use of special equipment, articles of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in RI within 10 miles of Providence, including Providence, on the one hand, and on the other, points in CT.

Notes.— (1) This proceeding is a matter directly related to a finance proceeding in MC-F-14477F, published in the **Federal Register** issue of October 23, 1980. (2) The purpose of this application is to eliminate gateways at MA points in order to provide the through service as stated above. (3) This supplemental decision-notice is the result of applicant's petition to reopen for the purpose of receiving additional evidence and for reconsideration of the prior publication. The original publication deleted the through service stated above because Coles sought to tack the authority being purchased in MC-F-14477F with authority pending in MC-93682 (Sub-No. 20F). That authority has now been certificated.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40078 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[No. 37427*]

Cortez Pipeline Company—Petition for Declaratory Order—Commission Jurisdiction Over Transportation of Carbon Dioxide by Pipeline

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Filing of Petitions.

SUMMARY: Petitioners question whether their proposed interstate pipeline transportation of carbon dioxide gas is subject to our jurisdiction under 49 U.S.C. 10501. We are instituting a proceeding to resolve the question. It is our tentative conclusion that we do not have jurisdiction.

DATE: Comments are due February 9, 1981.

ADDRESS: An original and 15 copies of comments should be sent to: Interstate Commerce Commission, Room 5340, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: Cortez Pipeline Company of Houston, TX, a pipeline common carrier filed a petition on April 21, 1980 in No. 37427,[1] seeking a declaratory order to determine if its proposed transportation of carbon dioxide in interstate commerce is excepted from the jurisdiction of the Interstate Commerce Commission under the provisions of 49 U.S.C. 10501(a)(1)(C):

" " " the Interstate Commerce Commission has jurisdiction over transportation " " " by pipeline " " " when transporting a commodity other than water, gas, or oil" " ".

Pipeline companies may construct or extend their facilities without a certificate or other evidence of franchise from us. See *Petroleum Products, Williams Bros. Pipeline Co.*, 351 I.C.C. 102, 107 (1975). Nevertheless, there is still a question here of whether the commodity involved in the proposal is excepted from our jurisdiction.

Petitioner will transport carbon dioxide for the Shell Oil Company over its proposed 480-mile pipeline from Colorado to Texas, crossing New Mexico. Approximately two-thirds of the pipeline will be constructed on Federal, State, and Indian lands, and petitioner must, accordingly, obtain right-of-way permits from the U.S. Interior Department's Bureau of Land Management or from the States involved. In addition, the U.S. Department of Transportation is exercising jurisdiction over the pipeline's compliance with safety standards. Carbon dioxide will be used to flood depleted oil fields and force to the surface an estimated 280-million barrels of otherwise unrecoverable crude oil.

Petitioner takes the position that carbon dioxide is covered by the present statutory exception from our regulation of "water, gas, or oil". It will be transported under sufficient pressure to put it in a "super-critical" state between a gas and a liquid, but at normal atmospheric pressure carbon dioxide is a gas. It contains only slight traces of methane hydrocarbon being 98 percent pure and is, therefore, noncombustible. According to petitioner, the 49 U.S.C. 10501(a)(1)(C) exclusion was broadened by the recodification of the Interstate Commerce Act to include noncombustible as well as combustible gas useable for fuel.

Petitioner has previously sought exemption from the jurisdiction of the Federal Energy Regulatory Commission (FERC),[2] which regulates the interstate transportation of natural gas pursuant to the Natural Gas Act of 1938,[3] on the ground that carbon dioxide is not a natural gas.

The FERC DECISION, IN DOCKET No. CP-130 (1979), does not rest on a construction of the term "natural gas," but rather proceeds primarily by reference to the goals and purposes of

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* Embraced in this decision is No. 37529, Arco Oil and Gas Company—Petition for Declaratory Order—Jurisdiction Over Interstate Pipeline Transportation of Carbon Dioxide. See Footnote 1.

[1] In No. 37529, Atlantic Richfield Company filed a petition on October 21, 1980 seeking a declaratory order for the same purpose. It also intends to transport carbon dioxide by pipeline from Colorado to West Texas for use as a tertiary method of recovering crude oil reserves (the primary method being oil flowing to the surface as a result of natural reservoir pressure; and the secondary method consisting of flooding the reservoir with water to force oil to the surface). This petition makes essentially the same argument, as does the first petitioner, in justification of an exception from our jurisdiction. Disposition of the lead petition will also govern disposition of the embraced petition.

[2] Successor to the Federal Power Commission.

[3] Pub. L. 75-687.

the Natural Gas Act. FERC concluded that because the goal of that Act was to protect consumers from exploitation at the hands of natural gas companies, jurisdiction over CO^2 *pipelines would advancxe no goal or purpose of the NGA.*

The former section 1(1)(b), originally part of the Hepburn Act of 1906,[4] provided that this Commission had jurisdiction over the interstate transportation of comodities (including oil) by pipeline, "except water and except natural or artificial gas". After the transfer of jurisdiction over oil to the Department of Energy in 1977,[5] the Interstate Commerce Act was recodified in 1978 [6] for revision and reorganization but not substantive change.[7] The recodification, as pertinent, reflected the transfer of jurisdiction over oil and, also, eliminated the "natural or artificial" description of gas because those words were considered surplus.[8]

Gas is found in the ground separately or with oil. All gas has certain common characteristics of lacking independent shape or volume and of expanding indefinitely, but a difference in the hydrocarbon content can result in gas being more or less combustible. In nature, combustible and noncombustible gas are often produced together,[9] and the carbon dioxide that petitioner proposes to transport comes from natural underground sources.[10] Even so, trade usage has generally treated combustible gas useable for fuel as natural gas.

Gas was first used as fuel for lighting purposes in the 1800's.[11] By the time of the Hepburn Act, natural gas was beginning to replace artificial gas for lighting and manufacturing. Congress was considering gas as a fuel when it excepted "natural or artificial gas", and the recovery of oil reserves by flooding with gas (including carbon dioxide) was not used extensively until a decade or so later.[12] The question is whether Congress intended to exclude from our jurisdiction all gas types regardless of origin or source. We believe it did.

The Congressional debates preceding the Hepburn Act involved, among other things, the question of whether artificial gas and natural gas should both be excepted from this Commission's jurisdiction. Pipelines were expanding and transporting natural gas greater distances in interstate commerce but it was not certain how much artificial gas moved in interstate commerce. Nevertheless, to make clear that both types of gas were excluded, a proposal was offered to strike the word "natural" from the original draft of the bill which excepted "natural gas", leaving only the word "gas". Instead, the final compromise, to accomplish the same purpose, specified that both "natural or artificial gas" were excepted from our jurisdiction.[13]

This distinction between basic gas types by origin or source was also made in the legislative discussion preceding the Natural Gas Act, to the effect that it was confined to regulation of natural gas because manufactured gas could not be transported profitably in interstate commerce.[14] Furthermore, in *Henry* v. *F.P.C.*, 513 F. 2d 395, 399 (D.C. Cir., 1975), the court held that in the Natural Gas Act Congress made a distinction between natural and artificial gas which is based on its origin and not its physical characteristics of heat value or methane content.

A statute should be given its plain meaning, as the courts have often held. See, for example, *Henry* v. *F.P.C., supra.* The current section 10501(a)(1)(C) uses the unqualified word "gas," which represents no substantive change from the former act according to the recodification law. The plain meaning of the former act, as supported by the legislative history, is that the universe of gas types classified by origin or source was excluded.[15] It is therefore our tentative conclusion that we lack jurisdiction over the transportation of CO_2 by pipeline.

The opinion of a sister agency should be given weight, if possible, so that related statutes can be coordinated. *Erlenbaugh* v. *United States*, 409 U.S. 239, 243–44 (1972). However, in this case the FERC decision is not helpful to us because it did not construe or interpret the terms natural and artificial gas. Its decision was based on other grounds.

Section 554(e) of the Administrative Procedure Act, U.S.C. 554(e), authorizes an agency in its discretion to issue a declaratory order to terminate a controversy or remove uncertainty. While we do not believe that we have jurisdiction over the considered transportation, the issue is important enough to institute a proceeding and accept comments on the petition and our view on it. This action should not significantly affect the quality of the human environment or conservation of energy resources, but comments may also address this matter.

Authority: 49 U.S.C. 10501(a)(1)(C) and 10321; and 5 U.S.C. 554(e).

Decided: December 16, 1980.

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

James H. Bayne,

Acting Secretary.

[FR Doc. 80-40267 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29450 (Sub-No. 1), et al.]

Iowa Falls Western Holding Co.—Purchase (Portion)—Chicago, Rock Island and Pacific Railroad Co.; Debtor (William M. Gibbons, Trustee) Between Iowa Falls and Sibley, et al.

In the matter of Finance Docket No. 29450 (Sub-No. 1), Iowa Falls Western Holding Company—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Iowa Falls and Sibley, IA; Finance Docket No. 29451 (Sub-No. 1), Royal-Manson Shippers' Association—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Royal and Manson, IA; Finance Docket No. 29459 (Sub-No. 1), Gateway Railroad-purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) Lines in Iowa; Finance Docket No. 29470 (Sub-No. 1), Mid-States Port Authority-purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Denver, Co. and McFarland, KS; Finance Docket No. 29471 (Sub-No. 1), Little Rock and Western Railway

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[4] Pub. L. 59–337.

[5] Pub. L. 95–91.

[6] Pub. L. 95–473.

[7] As provided by section 3 of the recodification law.

[8] According to House Report 95–1395.

[9] FERC decision in docket No. CP 79–130, supra.

[10] It can also be manufactured from such as fertilizer, an example of which is a current intrastate pipeline movement of carbon dioxide in Texas from a fertilizer plant to an oil field. *Pipeline Digest*, October 6, 1980, page 19.

[11] *The Transportation Crisis* by Wilson (1933), Chapter VIII, pages 123, 124, and 129.

[12] *Function of Natural Gas in the Production of Oil*, by the U.S. Bureau of Mines (1929).

[13] 40 Congr. Rec. 6369, 6371, 6372, and 7006 (1906).

[14] 81 Congr. Rec. 9316 (1937).

[15] The transportation of gas by itself can be distinguished from a 1971 valuation report in *Black Lake Pipeline Company*, 342 I.C.C. 339–40, which clearly presented no jurisdictional issue and involved transportation of a mixture of ethane and oil, to facilitate movement through the pipeline.

Also, a motor-carrier application proceeding for a certificate to transport liquid methane, *Indianhead Truck Line, Inc., Ext-Methane*, 123 M.C.C. 1, 7 (1975), in which natural gas is defined as a mixture largely of ethane and methane, is not determinative of the issue here. There is no question that combustible gas usable for fuel is natural gas, but should noncombustible gas with its origin in nature also be classified as a natural gas?

Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between North Little Rock and Perry, AR; Finance Docket No. 29473 (Sub-No. 1), Southeast Iowa Shippers Association—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Fruitland and Burlington, IA; Finance Docket No. 29474, Regional Transportation Authority (Illinois)—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Chicago/Joliet Commuter Line; Finance Docket No. 29475 TECE Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Texas, Oklahoma, and Kansas; Finance Docket No. 29478, Shelton-Davis Transportation Co.—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Oklahoma; Finance Docket No. 29479, Des Moines Metropolitan Transit Authority—purchase (portion)—Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee); Finance Docket No. 29480, Arkansas Transportation Commission and Oklahoma Department of Transportation purchase—portion (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Oklahoma, Tennessee, Arkansas, and Louisiana; Finance Docket No. 29516, Atlantic and Pacific Railway Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Iowa, Nebraska, and Illinois; Finance Docket No. 29518, Chicago and North Western Transportation Company—Notice of Intent To file an application to purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Lines in Iowa; Finance Docket No. 29533, City of Sibley—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Sibley, IA; and Finance Docket No. 29537, Northern Properties Corporation—purchase and trackage rights and the Kansas City Northern Railway Company—operation—Chicago, Rock Island and Pacific Railroad Company (William M. Gibbons, Trustee) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) lines in Missouri, Minnesota, and Iowa.

AGENCY: Interstate Commerce Commission.

ACTION: Modification of the decision served October 31, 1980 and published November 7, 1980 at 44 FR 74084; and vacation of the procedural timetable.

SUMMARY: These "applications" will be treated as "offers to purchase" portions of the Chicago, Rock Island and Pacific Railway Company, Debtor (William M. Gibbons, Trustee) (Rock Island) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) (Milwaukee). All filings of "competing applications" will be treated as "notices of intent to file applications." The timetables set in prior decisions are vacated and these proceedings will be rescheduled for processing when purchase agreements as well as more detailed information about the proposals are submitted.

DATES: This decision will be effective on December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7026 or, Ellen D. Hanson, (202) 275–7245.

SUPPLEMENTAL INFORMATION: A procedural timetable for these proceedings and for all applications seeking to acquire any of the same lines (competing applications) was set in a decision served October 31, 1980. This timetable required all applications to be complete and all competing applications to be filed by December 2, 1980. We have received requests for extensions of time from the Metropolitan Transit Authority, Gateway Railroad Corporation, Little Rock and Western Railway Corporation, and Iowa Falls Western Holding Company (each a noncarrier applicant). We have received incomplete competing applications from Chicago and North Western Transportation Company (C&NW) (in Finance Docket No. 29518 (Sub-No. 1)); and Northern Property Corporation (NPC) and Kansas City Northern Railway (KCNR) (in Finance Docket No. 29537). We have also received notices of intent to file applications from Burlington Northern, Inc. (BN) and Kansas City Southern Railway Company (KCS). Finally, the City of Sibley, IA also filed an incomplete application to purchase 3 miles of track.

A brief history of these proceedings will be helpful to an understanding of our ruling here. Section 112 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. No. 96–254 (1980) (RITEA) required that, to be eligible for loan guarantees from Federal Railroad Administration (FRA), *purchase applications* by noncarrier applicants had to be filed with us by September 15, 1980. In response to this deadline, noncarriers filed applications that were incomplete because they did not contain purchase agreements and generally lacked specific information about the terms of the purchase and proposed operations. This information was not available to the noncarrier applicants at the time the applications were filed.

Commission procedure requires that applications be complete when filed, except for informational requirements waived in advance. However, in view of the filing deadline set by RITEA, we exercised our administrative discretion and temporarily waived certain informational requirements and accepted the incomplete applications. When the temporary waiver expired, applicants requested and were granted further extensions (until December 2, 1980) in our October 31, 1980 decision.

The second deadline, December 2, has come and applicants have filed again for extensions. The noncarriers show that negotiations with the Trustee continue to be complicated and protracted. The Trustee is said to be completing the real estate valuation appraisal and serious negotiations are beginning.

In our October 31 order we also required competing applications to be filed by December 2, C&NW, NPC, KCNR, BN and KCS have requested that we modify that procedural timetable and allow them to file a notice of intent to file an application. They argue that a notice will provide the Commission with crucial information about competing interests for specific Rock Island lines. They contend that applications should not be required at this time because they will be incomplete until agreements are reached, and because the filing of an application starts the 100-day decisional deadline under Section III of RITEA. The railroads doubt that negotiations will be completed in time for the Commission to reach a decision within the 100-day period.

The noncarrier applications are not subject to the 100-day deadlines set by RITEA; however, there is a 180-day decision time limit imposed under Sections 5(b)(2) and 17(b)(2) of the Milwaukee Railroad Restructuring Act, Pub. L. 96–101, 93 Stat. 736 (1979) (MRRA). Under MRRA a recommendation to the Court in these proceedings must be made by March 12. Since serious negotiations have only just begun, it is unlikely that agreements can be filed and hearings conducted on applications within the time limit.

A reasonable response to these circumstances is for us to postpone

these proceedings until agreements have been reached and specific relevant information is available. A recent amendment to RITEA makes this approach the proper one. Section 701 of the Staggers Rail Act of 1980, Pub. L. 96–448, modified section 112 of RITEA so that "purchase offers" could be filed with the Commission prior to September 15, 1980 in lieu of the prior requirement of "purchase applications."

Clearly these incomplete filings more closely resemble purchase offers than purchase applications. They essentially consist of proposals to the Rock Island and Milwaukee Trustees which must be accepted or negotiated in order to become binding contracts. As we have defined applications, except in the instance of applications competing with one previously filed contained an agreement, an agreement is required. See 49 CFR 111.2(a)(9) and 1111.21(a)(3)(ii). Accordingly, we will treat the noncarrier applications as purchase offers rather than applications. When the pertinent information is supplied, the puchase offers will be handled as applications and will be processed expeditiously. Applications filed after September 15 will be treated as notices of intent to file applications. All information which has been filed can be incorporated by reference into the future application. The filing fee will be held until the application is filed, and all docket numbers will remain the same.

The changes we have made constitute an attempt to comply with the Congressional policy, enunciated in RITEA and MRRA, to preserve rail service. When Congress required applications to be filed by the September 15, 1980 deadline, we modified our procedural rules so that noncarriers would be able to qualify for FRA loans. We extended the deadline in October, rather than holding the proceedings in abeyance, in hopes that a strict timetable would encourage the parties to hasten negotiations and thus speed up the transfer of these lines. However, we cannot act when the relevant information is not available. Under these circumstances, our analysis would be meaningless. Accordingly, in view of the amendment contained in section 707 of the Staggers Act, it is now appropriate to treat these filings as offers to purchase.

This approach also preserves the noncarriers' applications for FRA assistance. If we were to dismiss the applications as incomplete the noncarriers would have to apply individually to the Secretary of Transportation for an extension of the deadline for filing purchase offers or applications.

It is ordered: The procedural timetables which have been set in these proceedings are vacated. The submissions previously made by noncarrier applicants will be treated as offers and will be processed expeditiously as they are completed. The information provided by the railroads and by the City of Sibley will be treated as notices of intent to file applications and can be incorporated into further applications.

Dated: December 17, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Trantum concerning with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Trantum, Concurring:

Our previous decisions appear to have been unable to expedite the negotiations. I hope that today's decision, despite the delays it imposes, wioll ultimately contribute to a speedier resolution of the Rock Island and Milwaukee Road situations.

[FR Doc. 80–40270 Filed 12–23–80; 8:45 am]

BILLING CODE 7035–01–M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

December 19, 1980.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the ICC on or before January 8, 1981.

No. 43883, Trans-Continental Freight Bureau, Agent, (No. 557), rates on freight and/or passenger motor vehicles, set up on bi-level or tri-level cars, from Wayne and Wixom, MI, and Fairlane, OH to Portland, OR and Seattle and Spokane, WA. Rates proposed to be effective in its Tariff ICC TCFB 3001–B. Grounds for relief-carrier competition.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–40272 Filed 12–23–80; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 400]

Modification of Procedure for Handling Exemptions Filed Under 49 U.S.C. 10505

AGENCY: Interstate Commerce Commission.

ACTION: Notice of New Procedure.

SUMMARY: The Commission is modifying its procedure for dealing with petitions for exemption under 49 U.S.C. 10505, in light of the Staggers Rail Act of 1980, Pub. L. 96–448. Except in the small number of cases where a potential for significant impact exists or where the impact is not readily ascertainable from the petition, the Commission will eliminate the current notice and comment procedure and issue a final decision based solely on the petition. Any exemption granted would become effective 30 days from the date of the decision's publication in the **Federal Register**, except in unusual circumstances. Appeal procedures are discussed.

EFFECTIVE DATE: December 24, 1981.

FOR FURTHER INFORMATION CONTACT: Richard A. Kelly, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The Commission is modifying the procedure currently used for handling petitions for exemption under 49 U.S.C. 10505, in light of the Staggers Rail Act of 1980 (Pub. L. 96–448, 94 Stat. 1895, October 14, 1980).

Under the former section 10505, the Commission could grant an exemption only after providing an opportunity for a proceeding. (See former 49 U.S.C. 10505(d).) This requirement has been satisfied by providing a **Federal Register** notice and allowing comments to be filed.

The Staggers Act amended section 10505 by eliminating the requirements for a proceeding in all cases. (See section 213 of the Staggers Act *supra.)* The legislative history indicates that Congress, in eliminating this requirement, intended to give the Commission greater flexibility in the rail exemption area. Congress intends for the Commission to actively pursue exemptions under this section and has given us broad discretion to effectuate this mandate. See H.R. Rep. No. 96–1430, 96th Cong., 2d Sess. 104–105 (1980) and 49 U.S.C. 10101a(2).

Under current procedure, notice of the proposed exemption is published in the **Federal Register** providing for a 30-day comment period. At the end of the 30-day period, the Commission issues a decision which becomes effective on its date of publication. This procedure has required approximately 4 months to complete and in the vast majority of cases caused unnecessary delay.

The majority of exemption petitions have involved only minor transactions which are likely to have little, if any, impact on competitors, shippers or employees. Although comments have been filed in 22 of the 37 exemption petitions filed since January 1980, not once has an exemption been denied.

Usually the petition contained enough information to enable the Commission to make a determination as to whether the proposed transaction met the criteria of section 10505. Comments have added very little to our determination of exemption petitions.

Our new procedures will eliminate the initial notice and comment procedure in most cases. When the Commission receives a petition for exemption under section 10505, an initial determination will be made as to whether the proposed exemption has the potential of a significant adverse effect on competitors, shippers, employees or the environment. If the Commission determines that no significant adverse effects are likely, the decision will be published in the **Federal Register** as a final decision to become effective, in most cases, 30 days from its date of publication. The 30-day period will provide an opportunity for any party objecting to the decision to file a petition to reopen the proceeding for reconsideration and to submit evidence supporting the petition.

When the exemption is to become effective within 30 days of the publication date, petitions to reopen will be required to be filed within 20 days of the date of publication. The filing of the petition will not automatically stay the effectiveness of the decision. However, the Commission, on its own motion or on petition, may stay the effective date while considering any petitions. Petitions to stay must be filed within 10 days of the date of publication.

Although the 30-day effective date will be used in the majority of cases, the Commission may, in extraordinary circumstances, determine that a particular exemption should be granted to be effective immediately or within less than 30 days. When an exemption would be effective sooner than 30 days after publication of the decision, the decision will specify the time periods for filing of petitions.

In cases where the impact of the proposed exemption is not readily ascertainable from information contained in the petition, or where it appears that the potential of significant adverse effects exists, the Commission may determine that the current notice and comment procedure would be more appropriate and will continue to use that procedure in these circumstances.

There is no hearing requirement for exemption requests. In fact, the Staggers Act has not eliminated even the requirement for a "proceeding" in a section 10505 action. Our procedures therefore are intended to be informal. Our new procedures do not deprive any interested person of an opportunity to comment on exemption requests. It does, however, substantially reduce the time for processing cases since the Commission's decision goes into effect automatically (a similar technique is currently employed successfully in connection with licensing and acquisition cases). It reduces the time for filing comments from 30 days to 20 days and commits the Commission to a faster review of the comments and disposition of the exemption request. We believe that our new procedure will enable us to greatly expedite decisions in the exemption area, consistent with the Congressional mandate to minimize unnecessary regulation and reduce regulatory lag. (See H.R. Rep., *supra* at 105 and 49 U.S.C. 10101a(2)). Because our action involves changes in procedure and practices, public comment is not required under 5 U.S.C. 553(b)(A), and will serve only to delay implementation of the new procedure. The procedure therefore will be implemented upon the date of publication of this notice.

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

This notice is issued under the authority of 49 U.S.C. 10505 and 5 U.S.C. 553(b)(A).

Decided: December 18, 1980.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40268 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, **Federal Register** at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers* under 49 U.S.C. §§ 11344 and 11349. Those rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as confering more than a single operating right.

Applicant(s) must comply with all conditions set forth in grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice or the application of

a non-complying applicant shall stand denied.

Decided: December 19, 1980.

By the Commission, Review Board No. 5 member Krock, Taylor and Williams. (In MC-F-14512, Board member Taylor voted to publish with impediment raising the issue of duplicating rights. (In MC-F-14516, 14518 and MC-F-14522 member Krock not participating).

MC-F-14512F, filed November 21, 1980. STANDARD MOTOR FREIGHT, INC. (Standard) (2710 Railroad Street, Pittsburgh, PA 15222)—MERGER—LIGHTING EXPRESS, INC. (Lighting) (same address). Representative: John A. Vuono, 2310 Grant Building, Pittsburgh, PA 15219. Standard seeks authority to merge the interstate operating rights and property of Lighting into Standard for ownership, management, and operation. Peerless Transport Corp., which controls Standard through ownership of all of its outstanding capital stock, and in turn, Peter J. Sardano and Martin W. Snow who jointly control Peerless Transport Corp., seek authority to continue to control through this transaction. Joinder by Peter J. Sardano will be required as a condition to this approval. Standard controls Lighting pursuant to authorization granted in MC-F-12766. Lighting is a motor common carrier pursuant to certificates issued in MC-87786 and sub-numbers thereunder, which authorize the transportation of *general commodities* (usual exceptions), over irregular and regular routes, between points in western PA, and between western PA and points in OH and WV. Standard holds authority pursuant to certificates issued in MC-16340 and sub-numbers thereunder. Peerless Transport Corp., which controls Standard holds authority to operate pursuant to certificates issued in MC-119689 and sub-numbers thereunder.Condition: Authorization and approval of this transaction is conditioned upon the prior receipt by the Commission of an affidavit from Martin W. Snow and Peter J. Sardano, who control Peerless, stating that they do jointly control Peerless and that they join in this application. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC-F-14521F, filed December 5, 1980. BOND TRANSPORTATION, INC. (BOND)—CONTROL—TAR ASPHALT TRUCKING CO., INC. (TAT) (both of 155 Smith Street, Keasbey, NJ 08832). Representative: A. David Millner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Bond, a motor common carrier pursuant to authority issued in MC-141843 and sub-numbers thereunder, seeks authority to acquire control of TAT through the purchase by Bond of all of TAT's issued and outstanding stock. John Cramer, the sole stockholder of Bond, also seeks authority to acquire control through the transaction. Cramer Management Corp. (CMC) has also joined in the application. CMC has been granted authority under MC-F-14113F to control through management Bond and A-C Berwick Transporters, Inc. (AC), a motor common carrier pursuant to authority issued in MC-113041 and sub-numbers thereunder. The control granted in MC-F-14113F has not been consummated yet, but CMC seeks to be a party in this application in the event that the transaction authority in MC-F-14113F is consummated prior to consummation herein.

The operating rights to be controlled are contained in TAT's certificate in MC-123801 which authorizes the transportation, as a motor common carrier, of *(1) coal tar, coal tar distillates and residue, asphalt and asphalt admixtures,* in bulk, from Philadelphia, PA, and points within 10 miles of Philadelphia, and those in Hudson, Union, Somerset, Middlesex, and Bergen Counties, NJ, to points in NJ, NY, those in CT east of the Connecticut River, and those in PA on and east of U.S. Hwy 15; and (2) *coal tar, coal tar distillates and residue, asphalt and asphalt admixtures,* in bulk, in tank vehicles, (a) from Philadelphia, PA, and points within 15 miles of Philadelphia, to points in NJ, NY, those in CT west of the Connecticut River, and those in MD and DE within 100 miles of Philadelphia, (b) from points in NY, those in CT west of the Connecticut River, and those in PA on and west of U.S. Hwy 15, to points in Hudson, Union, Somerset, Middlesex, Bergen and Passaic Counties, NJ, (c) from Bethlehem, PA, to points in NJ, and (d) from points in CT west of the Connecticut River, to points in NY, restricted against tacking and joining of the separate grants of authority. Impediment: The operating rights of Bond duplicate to a certain extent the operations authorized in TAT's certificate. Applicants have indicated they will request cancellation of any duplicating authority that may result from this transaction in order to comply with the Commission's regulations at 49 CFR 1134.51. Approval and authorization of this transaction is, therefore, conditioned upon applicants setting forth all duplications and a plan for the elimination of such duplications. TAT's authority also duplicates to a certain extent that authority held by AC. If the authority granted in MC-F-14113F is consummated, applicants must also cancel any duplications which exist between AC and TAT.

MC-F-14518F, filed November 26, 1980. AMNACO, INC. (AMNACO) (2661 S. Broadway Street, Green Bay, WI 54304)—CONTINUANCE IN CONTROL—NATIONAL TRANSPORTATION SYSTEMS, INC. (National) (1315 Directors Row, Fort Wayne, IN 46808). Representative: Charles W. Singer, 2661 S. Broadway, Green Bay, WI 54304. AMNACO, a non-carrier holding company seeks authority to continue in control upon the institution by National of operations, in interstate or foreign commerce, as a motor contract carrier. By the same application, Al J. Schneider, the majority shareholder, Chairman of the Board, and a Director of AMNACO, and Donald J. Schneider, the largest minority shareholder, President, and a Director of AMNACO, seek authority to acquire control of said rights and property through the transaction. AMNACO owns all of the capital stock of the following motor carriers: Schneider Transport, Inc. (MC-51146), Schneider Tank Lines, Inc. (MC-110988), Distribution Service Systems, Inc. (MC-118159), Trans-National Truck, Inc. (MC-133655), WNI, Inc. (MC-191871), Contract Distribution Systems, Inc. (MC-144232), and National Bulk Transport, Inc. (MC-143594). By application published July 10, 1980, National seeks authority to operate as a contract carrier, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities requiring special equipment), between points in the United States (except AK and HI), under continuing contract(s) with ITOFCA, Inc., of Clarendon Hills, IL. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—AMNACO, Inc. is a non-carrier holding company. IN No. MC-F-13446, as modified by a decision served October 10 1979, AMNACO was subjected to the applicable provisions of 49 U.S.C. subchapter III of Chapter 111, relating to reporting and accounting, and specifically was subjected to 49 U.S.C. § 11302 to the extent that any issuance of securities or assumption of obligations or liabilities by AMNACO is related to or will have a substantial effect upon the activities of any carrier subject to the jurisdiction of this Commission under AMNACO's control. So far as can be certained from the evidence of record in this proceeding, we find the same conclusions.

MC-F-14516F, filed December 1, 1980. PRESTON TRUCKING COMPANY, INC. (Preston) (151 Easton Blvd., Preston, MD 21655)—CONTINUANCE IN CONTROL—PIONEER TRANSPORTATION SYSTEMS, INC. (Pioneer) (same address). Representative: Thomas M. Auchincloss,

Jr., 700 World Center Bldg., 918–16th Street, NW, Washington, DC 20006. Preston, a publicly held corporation, seeks authority to continue in control of Pioneer upon the institution by Pioneer of operations, in interstate or foreign commerce, as a motor contract carrier, upon the issuance of Permits in MC–150339 (Sub–Nos. 1, 2, and 3). The operating rights to be controlled are (1) *such merchandise* as is dealt in by wholesale and retail and chain hardware stores and by the manufacturers of power tools and (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1) above, between points in the United States (except AK and HI), under continuing contract(s) with Black & Decker (U.S.) Inc., of Towson, MD, under parts (1) and (2) above; *general commodities* (except used household goods, hazardous materials or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the United States; and *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the United States, under continuing contract(s) with Maryland Cup Corporation, of Owings Mills, MD. Preston is authorized to operate as a motor common carrier pursuant to authority issued in MC–1824 and sub-numbers thereunder.

Note.—Application for TA has been filed.

MC–F–14522F, filed December 9, 1980. MICHAEL P. CHRISMER (Chrismer) and JOHN P. BLUMER (Blumer) (both of P.O. Box 7463, Baltimore, MD 21227)—continuance in control—GENERAL PARTS EXPRESS, INC. (GPX) (P.O. Box 243, Hanover, MD 21076). Representative: Frank B. Hand, Jr., 521 South Cameron Street, Winchester, VA 22601. Chrismer and Blumer seek authority to continue in control of GPX, upon the institution by GPX of operations, in interstate or foreign commerce, as a motor contract carrier. Chrismer and Blumer do not hold operating authority from this Commission. However, they control Dignan Trucking, Inc., a motor common carrier, through stock ownership. Dignan's operating rights are contained in certificates issued in No. MC–31237 and sub numbers thereunder which authorize the transportation of (1) *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, automobiles, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Baltimore, MD, and Alexandria, VA, serving all intermediate points and the off-route points of Jessup, Savage, and Garrett Park, MD, and points in Maryland within 5 miles of Washington, D.C., and Baltimore, MD, and those in Virginia within 10 miles of Washington, from Baltimore over U.S. Highway 1 to Alexandria, and return over the same route, serving the store facilities of Top Value Enterprises, Inc., at West Springfield, VA, as an off-route point in connection with carrier's authorized regular-route operations between Baltimore, MD, and Alexandria, VA, serving the store facilities of Top Value Enterprises, Inc., at Centreville, VA, as an off-route point in connection with carrier's authorized regular-route operations between Baltimore, MD, and Alexandria, VA; *catalogues*, from Baltimore, MD, to Cascade and Pen Mar, MD, with no transportation for compensation on return except as otherwise authorized; *general commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, automobiles, commodities in bulk, commodities requiring special equipment, and those injurious or contaminated to other lading, between points within 6 miles of Baltimore, MD, including Baltimore; *souvenirs and novelties*, between Washington, D.C., Richmond, VA, Annapolis, MD, and Baltimore, MD; (2) *newsprint and groundwood paper*, having an immediately prior movement by rail, from Alexandria, VA, to Aberdeen, Annapolis, Bel Air, Elkton, Frederick, Hagerstown, Havre de Grace, La Plata, Leonardtown, Upper Marlboro, and Westminster, MD, with no transportation for compensation on return except as otherwise authorized; (3) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, automobiles, commodities in bulk, and those requiring special equipment), serving the facilities of London Fog Division of Londontown Corporation, located at or near Eldersburg (Carroll County), MD, as an off-route point in connection with carrier's otherwise authorized regular-route operations; (4) *malt beverages*, from Alexandria, VA, to Frederick, Salisbury, Waldorf, Havre de Grace, Frostburg, Hagerstown, and Centreville, MD, with no transportation for compensation on return except as otherwise authorized (RESTRICTION: The authority granted herein is restricted to the transportation of traffic having an immediate prior movement by rail) and; (5) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Baltimore, MD, on the one hand, and, on the other, points in Maryland and those in Delaware on and south of the Chesapeake and Delaware Canal, restricted to the transportation of traffic having a prior or subsequent movement by water. GPX presently only holds TA temporary authority. However, GPX has been granted authority in MC–148433 (Sub-Nos. 2F and 3F), which will authorize the transportation, as a motor contract carrier, of (1) *Automotive parts and automotive accessories and such commodities as are dealt in by distributors of automotive parts* (except commodities in bulk), between the facilities of General Motors Corporation (General Motors Parts Division), Parkway Industrial Center, Hanover, MD, on the one hand, and, on the other, points in Kent, New Castle, and Sussex Counties, DE, York, Adams, Franklin, Fulton, Cumberland, Huntingdon, Mifflin, Juniata, Perry, Dauphin, Northumberland, Snyder, Union, Montour, Lycoming, Clinton, and Centre Counties, PA, Frederick, Shenandoah, Clarke, Warren, Page, Madison, Rappahannock, Fauquier, Loudoun, Culpeper, Prince William, Arlington, Fairfax, Accomac, and Northampton Counties, VA, Berkeley, Morgan, Hampshire, Jefferson, Mineral, Hardy, Grant, Tucker, Randolph, and Pendleton Counties, WV, and the District of Columbia, under continuing contract(s) with General Motors Corporation of Flint, MI, and (2) *Automotive accessories and such commodities as are dealt in or used by distributors of automotive parts* (exept commodities in bulk), between points in the U.S., under continuing contract(s) with General Motors Corporation (General Motors Parts Division), of Flint, MI.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40278 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested

authority must be filed with the Commission on or before January 23, 1981. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC–F–13901F, filed February 12, 1979, authority sought for purchase by FOUR WINDS VAN LINES, INC., 7035 Convoy Court, San Diego, California 92138 of a portion of the operating rights of PLYMOUTH VAN LINES, INC., 4433–41 Howley Street, Pittsburgh, Pennsylvania 15224. Applicants' representative: Robert J. Gallagher, Esq., 1000 Connecticut Avenue, NW., Suite 1112, Washington, D.C. 20036. Operating rights sought to be purchased: Household Goods, as defined by the Commission, over irregular routes, (15) between points in MD, on the one hand, and, on the other, points in AL, AZ, CA, CO, that part of FL on and west of U.S. Highway 41, that part of GA on and west of U.S. Highway 441, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NV, that part of OH on and west of Interstate Highway 75, that part of TN on and west of Interstate Highway 65, UT, and WI. (15a) Between points in VA, on the one hand, and, on the other, points in AZ, CA, CO, MI, NE, NV, and UT. (15c). Between points in that part of VA on and east of U.S. Highway 15, on the one hand, and, on the other, points in that part of IL on and north of Interstate Highway 70, that part of IN on and north of U.S. Highway 40, IA, KS, and that part of OH on and north of U.S. Highway 224. Application has been filed for temporary authority under Section 210a(b). Hearing site: San Diego, CA.

Note.—Vendee is authorized to operate as a common carrier pursuant to Certificate No. MC–15643 and subs thereto between points in CT, PA, NJ, NY, OH, MI, IL, IN, NC, MD, MO, VA, WV, WI, RI, and the DC. Between Boston, MA and points within 25 miles thereof, on the one hand, and, on the other, points in CT, ME, NH, VT, MA, RI, NJ, and NY. Between points in OK on the one hand, and, on the other, points in CO, KS, LA, MO, and TX. Between points in Cleveland and McClain, OH, on the one hand, and, on the other, points in AR, KS, and TX. Between points in Beckham County, OH, and points within 50 miles thereof, on the one hand, and, on the other, points in OK, TX, and NM. Between points in AL, FL, GA, NC, SC, and TN. Between points in NC, and TN, on the one hand, and, on the other, points in KY and DE.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–40277 Filed 12–23–80; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 383]

Motor Carriers Permanent Authority Decisions; Decision-Notice

Decided: December 19, 1980.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dimissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transporation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed on or before January 23, 1981 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate and applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication or the application shall stand denied.

By the Commission, Review Board Number 3 Members Parker, Fortier Hill

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a common carrier by motor vehicle, in interstate of foreign commerce, over irregular routes, except as otherwise noted.

MC 145577 (Sub-26F), filed June 9, 1980, noticed in the **Federal Register** issue of December 1, 1980, and republished this issue. Applicant: GULLETT-GOULD, LTD., P.O. Box 406, Union City, IN 47390. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215. Transporting (1) *photographic equipment* and (2) *materials, supplies and products* used in the manufacture and processing of photographs (except in bulk), between the facilities of Eastman Kodak Company at Rochester, NY, Windsor, CO, and points in CA.

Note.—The purpose of this republication is to correct the territorial description.

[FR Doc. 80-40291 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g.'s, unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action uder the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 9, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign, commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP4-169

Decided: December 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Joyce not participating.

MC 89617 (Sub-28F), filed November 25, 1980 and noticed in the **Federal Register** issue of December 11, 1980, and republished this issue. Applicant: LEWIS TRUCK LINES, INC., P.O. Box 1494, Conway, SC 29526. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 2006. Transporting (1) *building materials and construction materials*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in AL, FL, GA, NC, SC, TN, and VA.

Note.—The purpose of this republication is to correct the commodity description in this proceeding.

Volume No. OP4-171

Decided: December 19, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones. Member Jones not participating.

MC 76266 (Sub-137F), filed November 28, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, Inc., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Jack R. Turney, Jr., 2001 Massachusetts Ave., NW., Washington, DC 20036. Over regular routes, transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), (1) between Cleveland, OH and Boston, MA, over Interstate Hwy 90, (2) between Cleveland, OH and Philadelphia, PA, from Cleveland over Interstate Hwy 77 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Philadelphia, and return over the same route, (3) between Cleveland, OH and New York, NY, from Cleveland over Interstate Hwy 77 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 280, then over Interstate Hwy 280 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 495 to New York, and return over the same route, (4) between Denver, CO and San Francisco, CA, from Denver over US Hwy 40 to junction Interstate Hwy 80 near Salt Lake City, UT, then over Interstate Hwy 80 to San Francisco, and return over the same route, (5) between Denver, CO and Los Angeles, CA, as follows: (a) from Denver over Interstate Hwy 70 and US Hwy 6 to junction Interstate Hwy 15, then over Interstate Hwy 15 to junction Interstate Hwy 10, then over Interstate Hwy 10 to

Los Angeles, and return over the same route, and (b) from Denver over Interstate Hwy 25 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction Interstate Hwy 15, then over Interstate Hwy 15, to junction Interstate Hwy 10, then over Interstate Hwy 10 to Los Angeles, and return over the same route, (6) between Denver, CO and Seattle, WA, from Denver over US Hwy 40 to junction Interstate Hwy 80N near Salt Lake City, UT, then over Interstate Hwy 80N to Portland, OR, then over Interstate Hwy 5 to Seattle, and return over the same route, (7) between Minneapolis, MN and Seattle, WA, from Minneapolis over Interstate Hwy 94 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Seattle, and return over the same route, (8) between Minneapolis, MN and Portland, OR, from Minneapolis over Interstate Hwy 94 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction US Hwy 395 at or near Ritzville, WA, then over US Hwy 395 to junction WA Hwy 14 at or near Pasco, WA, then over WA Hwy 14 to junction US Hwy 730 at or near the WA–OR state line, then over US Hwy 730 to junction Interstate Hwy 80N at or near Boardman, OR, then over Interstate Hwy 80N to Portland, and return over the same route, (9) between Kansas City, MO and Houston, TX, from Kansas City over Interstate Hwy 35 to Dallas, TX, then over Interstate Hwy 75 to Houston, and return over the same route, (10) between Kansas City, MO and San Antonio, TX, over Interstate Hwy 35, and (11) serving all intermediate points in routes (1) through (8) above, serving intermediate points in Wichita, KS, Oklahoma City, OK, and Dallas and Ft. Worth, TX in route (9) above, and serving the intermediate point of Austin, TX in route (10) above.

Note.—Applicant intends to tack with existing authority.

MC 76266 (Sub-142F), filed December 10, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *foodstuffs*, between the facilities of The Creamette Company, at points in Hennepin County, MN, on the one hand, and, on the other, points in the U.S.

MC 76266 (Sub-143F), filed December 11, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *salt* in blocks and packages between points in St. Louis County, MN on the one hand, and, on the other, points in IL, IA, MI, ND, SD, and WI.

MC 76266 (Sub-144F), filed December 5, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *furnaces* and *materials, equipment, and supplies* used in the manufacture of furnaces, between the facilities of Mammoth Division-Lear Siegler, Inc., at points in Hennepin County, MN, on the one hand, and, on the other, points in the U.S.

MC 128746 (Sub-67F), filed December 10, 1980. Applicant: D'AGATA NATIONAL TRUCKING CO, a corporation, 3240 South 61st St. Philadelphia, PA 19153. Representative: Edward J. Kiley, 1730 M St, N.W., Washington, D.C. 20036. Transporting (1) *malt beverage* and (2) *materials, equipment and supplies* used in the manufacture and distribution named in (1) above, between Williamsburg, VA, on the one, hand, and, on the other, points in PA.

MC 128746 (Sub-68F), filed December 11, 980. Applicant: D'AGATA NATIONAL TRUCKING CO, a corporation, 3240 So 61st St. Philadelphia, PA 19153. Representative: Edward J. Kiley, 1730 M St, N.W., Washington, D.C. 20036. Transporting *containers* and *materials, equipment, and supplies* used in the manufacture of containers, between points in the U.S., restricted to traffic originating at or destined to the facilities of Hoover Universal, Inc.

MC 133276 (Sub-14F), filed December 12, 980. Applicant: BERRY TRANSPORT, INC., 5315 N.W., St. Helens Rd., Portland, OR 97210. Representative: Nick I. Goyak, 1 S.W. Columbia, No. 555, Portland, OR 97258. Transporting (1) *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), in containers, (2) *empty containers and container chassis*, and (3) *iron and steel articles and machinery*, between points in OR, WA, ID, CA, MT, and UT.

MC 145966 (Sub-5F), filed December 8, 980. Applicant: NELSEN BROS., INC., P.O. Box 613, Nebraska City, NE 68410. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *building materials* (except commodities in bulk), and (2) *materials, equipment and supplies* used in the manufacture and distribution of building materials (except commodities in bulk), between points in Lancaster County, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146646 (Sub-135F), filed December 10, 980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355–A, Birmingham, AL 35217. Representative: James W. Segrest (Same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from Chicago, IL, to points in AZ, CA, CO, DE, FL, GA, AL, MA, MN, MO, NJ, NY, PA, RI, TX, and WA, restricted to traffic originating at the facilities of East-West Shippers Association and its members.

MC 151986 (Sub-1), filed December 12, 980. Applicant: GROVER F. BOYD, b.d.a. GROVER F. BOYD TRUCKING COMPANY, P.O. Box 67, Emelle, AL 35459. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting *hazardous and non-hazardous waste*, between points in Sumter County, AL, on the one hand, and on the other, points in the U.S. (except AK and HI), restricted against traffic having an immediately prior or subsequent movement by rail or water.

Condition: To the extent the certificate to be issued in this proceeding authorizes the transportation of classes A and B explosives or other dangerous commodities, limited to a period expiring 5 years from its date of issue.

MC 153146F, filed December 11, 1980. Applicant: DONALD CITRON, d.b.a. D & B TRUCKING, 1804 Rose Ave., Ceres, CA 95307. Representative: Donald Citron (same address as applicant). Transporting *foodstuffs*, between points in CA, OR, WA, NV, and AZ.

Volume No. OP4–172

Decided: Dec. 19, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 217 (Sub-26F), filed October 21, 1980, notice in the **Federal Register** issue of November 25, 1980, and republished this issue. Applicant: POINT TRANSFER, INC., 5075 Navarre Rd., SW, Canton, OH 44708. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *primary metal products*, including galvanized (except coating or other allied processing), *fabricated metal products* (except ordnance), and *machinery and supplies* as described in items 33, 34, and 35 of the Standard Transportation Commodity Code, respectively, between points in IL, IN, KY, MI, OH, PA, and WV.

Note.—The purpose of this republication is to correct the commodity description.

MC 29537 (Sub-11F), filed December 8, 1980. Applicant: R. H. CRAWFORD, INC. 425 Poplar St. Hanover, PA 17331. Representative: John E. Fullerton, 407 N. Front St., Harrisburg, PA 17101. Transporting (1) *synthetic fibers and synthetic yarns* and (2) *equipment, materials and supplies* used in the manufacture and distribution named in (1) above, between points in York and Adams Counties, PA, on the one hand, and, on the other, points in GA, MD, NC, NJ, PA, SC, TN and VA.

MC 29957 (Sub-94F), filed December 10, 1980. Applicant: TRAILWAYS SOUTHERN LINES, INC., 327 Gayoso, Memphis, TN 38103. Representative: George W. Hanthorn, 1500 Jackson St., Dallas, TX 75201. Over regular routes, transporting *passengers and their baggage, and express and newspapers*, in the same vehicle with passengers, between Louisville, MS and Philadelphia, MS: from Louisville over MS Hwy 15 to the junction of MS Hwy 19 to Philadelphia, and return over the same route, serving no intermediate points.

MC 42487 (Sub-1006F), filed December 8, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving points in Nottoway County, VA, as off-route points in connection with carrier's otherwise authorized regular route operations.

Note.—Applicant intends to tack to its existing authority and any authority it may acquire in the future.

MC 42487 (Sub-1007F), filed December 9, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, A CORPORATION, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between Evansville, IN and Owensboro, KY, serving all intermediate points: (1) From Evansville over IN Hwy 66 to junction U.S. Hwy 231, then over U.S. Hwy 231 to Owensboro, and return over the same route; (2) from Evansville, over U.S. Hwy 41 to junction U.S. Hwy 60, then over U.S. Hwy 60 to Owensboro, and return over the same route.

Note.—Applicant intends to tack its existing authority and any authority it may acquire in the future.

MC 42487 (Sub-1008F), filed December 12, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), serving points in Fayette County, CA, as an off-route point in connection with carrier's otherwise authorized regular route operations.

Note.—Applicant intends to tack its existing authority and any authority it may acquire in the future.

MC 49567 (Sub-15F), filed November 21, 1980. Applicant: GOLDEN BROS., INC., 234 E. McClure St., Kewanee, IL 61443. Representative: Donald S. Mullins, 1033 Graceland Ave., DesPlaines, IL 60016. Transporting (1) *earth moving machines and off-highway* mobile machinery and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities named in (1) above, between points in the U.S. (except AK and HI), under continuing contract(s) with Kress Corp. of Brimfield, IL.

MC 70557 (Sub-39F), filed November 10, 1980, previously noticed in the **Federal Register** issue of December 2, 1980, and republished this issue. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Transporting (1) *paper and paper products*, and (2) *materials and supplies* used in the manufacture and distribution of paper and paper products, between Cantonment and Jacksonville, FL, Ferguson, MS, and Sheldon and Herty, TX, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MO, MS, OK, NC, SC, TN, TX, VA, and WV.

Note.—The purpose of this republication is to correctly reflect Ferguson, MS in lieu of Ferguson, MD.

MC 123407 (Sub-655F), filed December 9, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: Sterling W. Hygema (same address as applicant). Transporting (1) *plastic pipe and fittings*, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities named in (1) above, between Macon, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 124017 (Sub-10F), filed November 24, 1980. Applicant: R. JEFFREY & SONS, INC., R.D. #1, Elysburg, PA 17824. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. Transporting *coal*, between points in Luzerne County, PA, on the one hand, and, on the other, those points in NY on and west of a line beginning at Sodus Point, NY, on the shore of Lake Ontario, and extending along NY Hwy 14 to Horseheads, NY, then along NY Hwy 17 to Waverly, NY, and then along U.S. Hwy 220 to the NY–PA State line.

MC 136987 (Sub-31F), filed December 9, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting (1) *iron and steel articles*, (2) scrap batteries and scrap metals, (3) *steel springs and custom metal parts*, and (4) *materials* used in the manufacture of the commodities named in (3) above, between points in the U.S., under continuing contract(s) with Church and Clark, Dallas Scrap Baling, and Associated Spring Barnes Group, Inc., all of Dallas, TX.

MC 140037 (Sub-10F), filed December 8, 1980. Applicant: SUNFLOWER CARRIERS, INC., P.O. Box 561, York, NE 68467. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. Transporting (1) *meats, meat byproducts, meat products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Sunflower Beef Packers, Inc., of York, NE.

MC 143956 (Sub-22F), filed November 17, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, 3574 Piedmont Rd., Atlanta, GA 30305. Transporting *such commodities* as are dealt in or used by automotive supply dealers, between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International boundary line between the U.S. and Canada, and points in TX, on the one hand, and, on the other, points in SC.

MC 148487 (Sub-2F), filed December 12, 1980. Applicant: DAN L. HUFFMAN, d.b.a. HUFFMAN TRUCKING CO., 3731 Avenida Simi, P.O. Box 973, Chatsworth, CA 91311. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. Transporting *plastic articles*, and *materials, equipment, supplies* used in the

manufacture or distribution of plastic articles (except commodities in bulk), between points in the U.S., under continuing contract(s) with Scepter Manufacturing Co., Limited, of Simi Valley, CA.

MC 148577 (Sub-2F), filed November 10, 1980, previously noticed in the **Federal Register** of December 2, 1980. Applicant: ORVILLE HOWARD, INC., 2724 Umbrella Tree Dr, Edgewater, FL 32032. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Transporting (1) *metals and metal products*, and (2) *equipment and supplies* used in the manufacture and distribution of the foregoing commodities, between points in the U.S., under continuing contract(s) with Nelson Steel Products, Inc., of Harleysville, PA, and Techalloy Company, Inc., and its subsidiaries, Techalloy Maryland, Inc., Reid-Avery Division, Techalloy Illinois, Inc., Techalloy Texas, Inc., Techalloy, Inc., California, and Techalloy Western, Inc., of Rahns, PA.

Note.—The purpose of this republication is to correct the names of the contract shippers.

MC 150427 (Sub-1F), filed December 10, 1980. Applicant: ARIETA M. LIVINGSTON, d.b.a. GOLDEN EMPIRE GRAIN CO., 6425 Brushwood Lane, Las Vegas, NV 89107. Representative: Arieta M. Livingston (same address as applicant). Transporting *soda ash and borax*, in bulk, between points in the U.S., under continuing contract(s) with Johns-Manville Canada, Inc., of Edmonton, Alberta, Canada.

MC 150447 (Sub-4F), filed December 12, 1980. Applicant: GSC TRANSPORT INC., 166 National Rd., Edison, NJ 08817. Representative: John L. Alfano, Esq., 550 Mamaroneck Ave., Harrison, NY 10528. Transporting (1) (a) *containers and containers closures*, (b) *glassware*, (c) *packaging products, and* (d) *scrap materials*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities named in (1) above (except commodities in bulk, in tank vehicles, and those which because of size and weight require the use of special equipment), between points in the U.S., under continuing contract(s) with Owens-Illinois, Inc., of Toledo, OH.

MC 152256 (Sub-1F), filed October 21, 1980, previously noticed in the **Federal Register** issue of November 17, 1980, and republished this issue. Applicant: GRAMMER INDUSTRIES, INC., P.O. Box 51, Grammer, IN 47236. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., 320 North Meridian St., Indianapolis, IN 46204. Transporting *fertilizer*, from points in Floyd County, IN, to points in KY, and those points in IL on and south of U.S. Hwy 36.

Note.—The purpose of this republication is to delete the restriction.

MC 153117F, filed December 12, 1980. Applicant: DAVE DAVENPORT AND SONS, INC., P.O. Box 41, Angleton, TX 77515. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Transporting *(1) commodities which, because of size or weight, require the use of special equipment, and (2) related machinery parts and related materials and supplies, when their transportation is incidental to those commodities in (1) above*, between points in TX, on the one hand, and, on the other, points in NM, OK, AR, LA, MS, TX, and CO.

MC 153127, filed December 5, 1980. Applicant: THOMAS DISTRIBUTING, INC., 2701 So. Carolyn Ave., Sioux Falls, SD 57106. Representative: A. J. Swanson, P.O. Box 1103, 226 No. Phillips Ave., Sioux Falls, SD 57101. Transporting, *malt beverages*, between points in the U.S., under continuing contract(s) with Fair City Distributing, Inc., of Huron, SD, and John A. Conkling Distributing, Inc. of Yankton, SD.

MC 153157F, filed December 12, 1980. Applicant: CASCADE COLUMBIA BEVERAGE, INC. d.b.a. COCA-COLA BOTTLING YAKIMA-TRI CITIES, P.O. Box 2905, Yakima, WA 98907. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting *fruit juices* from points in Yakima County, WA to points in CA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40274 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP-173]

Motor Carriers Permanent Authority Decisions; Decision-Notice

Decided: December 19, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 9, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication on applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 1, Members Carleton, Jones Joyce.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 119777 (Sub-511F), filed December 8, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy 85-East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting *shipments weighing 100 pounds or less*, if transported in a motor

vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 119777 (Sub-512F), filed December 12, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy 85-East, Madisonville, KY 42431.Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting *general commodities*, between Redlands, Shilling and Camden, CA, Mt. Plymouth, FL, Swan Creek, IL, Cayce, KY, Florence and Ft. Calhoun, NE, N. Miami, OK, and Meadowbrook and Glen Falls, WV, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service. To the extent a certificate issued herein authorizes the transportation of classes A and B explosives, it will expire 5 years from the date of issuance.

[FR Doc. 80-40275 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-82

Certain Headboxes and Papermaking Machine Forming Sections For the Continuous Production of Paper, and Components Thereof; Commission Order Approving Withdrawal of Motion to Amend the Complaint and Notice of Investigation and, Denying Motion to Designate the Investigation "More Complicated"

AGENCY: U.S. International Trade Commission.

ACTION: Commission approval of the complainant's withdrawal of its motion to amend the complaint and notice of investigation and denial of respondents' motion to designate the investigation "more complicated."

SUMMARY: The complainant filed a memorandum withrewing its motion (Docket No. 82-14) to amend the complaint and notice of investigation, following the presiding officer's recommendation that the investigation be designated "more complicated" if the motion to amend were granted. The Commission approved the complainant's withdrawal of its motion. On the basis of the aforesaid withdrawal, the Commission also denied respondents motion (Docket No. 82-18) to designate the investigation "more complicated."

ADDITIONAL INFORMATION: The Commission's Action and Order, as well as all other public documents on the record of this investigation, are available for public inspection during official working hours (8-45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Phyllis N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Room 224, Washington, D.C. 20436, telephone 202-523-0321.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 17, 1980.

[FR Doc. 80-40167 Filed 12-23-80; 8:45 am]

BILLING CODE 7020-02-M

[332-120]

U.S. Dye Industry: Its Competitiveness in the World Market; Investigation

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), the Commission has instituted investigation No. 332-120 for the purpose of gathering and presenting information on the U.S. dye industry and its competitiveness in the world market. This study will assess the overall competitiveness of the U.S. dye industry relative to foreign producers through the analysis of such factors as trade trends, research and development expenditures, new products, and management achievement. Possible future trends will also be discussed and analyzed.

EFFECTIVE DATE: December 10, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Edmund Cappuccilli or Mr. William Baker, Energy and Chemical Division, U.S. International Trade Commission, Washington, D.C. 20436 (Phone 202-523-0490 or 202-523-0492).

WRITTEN SUBMISSIONS: There is no public hearing scheduled for this study, however, written submissions from interested parties are invited. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than April 17, 1981. All submissions should be addressed to the Secretary of the Commission's office in Washington, D.C.

By order of the Commission.

Issued: December 19, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40168 Filed 12-23-80; 8:45 am]

BILLING CODE 7020-02-M

[731-TA-7 (Final)]

Certain AC Polyphase Electric Motors From Japan

Determination

On the basis of the record [1] developed in investigation No. 731-TA-7 (Final), the Commission determines, pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured [2] [3] by reason of the importation of AC, polyphase electric motors of not less than 150 horsepower and not greater than 500 horsepower (except submersible well-pump motors), from Japan, provided for in items 682.45 through 682.50 of the Tariff Schedules of the United States (TSUS), which the Department of Commerce has determined are being, or are likely to be, sold in the United States at less than fair value (LTFV).

Background

On June 17, 1980, the Commission received notification that the Department of Commerce had made a preliminary affirmative determination, but no final determination, with regard to certain electric motors from Japan but had excluded submersible well-pump motors from its investigation.[4]

Consequently, effective June 17, 1980, the Commission instituted investigation No. 731-TA-7 (Final) pursuant to section

[1] The record is defined in sec. 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

[2] Commissioners Bedell and Moore also determined in addition to material injury that the industry is threatened with injury by reason of the imports at LTFV.

[3] Commissioner Stern determined that the industry was not being injured nor threatened with injury by reason of the imports at less than fair value.

[4] The Department of Commerce reported that the petitioners do not produce submersible well-pump motors to any significant degree and did not submit specific information to Commerce suggesting that they are being, or are likely to be sold at less than fair value.

735 of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979, to determine whether, with respect to polyphase electric motors (except submersible well-pump motors) rated over 5 but not over 500 horsepower from Japan, an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports sold or likely to be sold at less than fair value.

Originally the Department of Commerce was scheduled to make a final determination with respect to LTFV sales by no later than September 2, 1980, but at the request of the parties, extended the date for a final determination until October 29, 1980. Also on that date, Commerce, Tokyo Shibaura Electric Co., and Toshiba International Corp. agreed to monitoring terms for motors of less than 150 horsepower, and Commerce suspended the investigation with respect to those products. On November 19, 1980, the Commission changed the scope of its investigation to exclude motors of less than 150 horsepower.

Copies of the notice of institution of investigation No. 731–TA–7 (Final) and of the hearing to be held in connection therewith were posted at the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and published in the **Federal Register** of July 9, 1980 (45 FR 46261). The public hearing was held in Washington, D.C., on November 20 and 21, 1980, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioners George M. Moore and Catherine Bedell

On the basis of the record developed in this investigation, we determine, pursuant to section 735(b)(1) of the Tariff Act of 1930, that an industry in the United States is materially injured [5] by reason of imports of polyphase electric motors of not less than 150 horsepower and not greater than 500 horsepower[6] from Japan sold at less than fair value (LTFV).[7]

The Industry

Our first task in analyzing the impact of imports sold at less than fair value on a domestic industry is to define the industry. Section 771(4) of the Tariff Act of 1930 defines the term "industry" as,

> the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

The term "like product" is defined in section 771(10) of the act as,

> a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

In analyzing the impact of the less than fair value imports on the domestic industry producing the like product, section 771(4)(D) further directs that,

> [t]he effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes a like product, for which the necessary information can be provided.

Thus, to properly define the industry, we must first describe the less than fair value imports. The imports which are covered by the Commerce determination of less-than-fair-value sales are ac, ploy phase[8] electric motors rated not less than 150 horsepower, and not over 500 horsepower. These motors are used for industrial purposes such as prime movers for pumps, compressors, and machine tools as well as for agricultural, and oil drilling purposes. The imported motors are manufactured in accordance with domestic industry standards as set by the National Electrical Manufacturers Association (NEMA). Under these standards, motors are generally classified by horsepower rating, frame size, type of enclosure and the number of poles ranging from 2 to 8.[9] According to Commerce statistics on standard Toshiba motors, there were numerous different model types imported into the United States during the period of this investigation. Commerce specifically considered 23 of these models.

There are approximately 15 domestic firms[10] which account for the total domestic production of electric motors in the range of 150 to 500 horsepower. The largest producers are General Electric Co., Westinghouse Electric Corp., Emerson Electric Co., Reliance Electric, Siemens-Allis, Inc., and Louis Allis Division of Litton Industries.[11] These 15 domestic producers manufacture the polyphase electric motors which are comparable to the 23 imported models investigated by commerce.

We find that at least 23 different standard motor models manufactured in the United States are virtually identical in characteristics and uses with the imported standard models and, therefore, are to be considered as like products. There may be slight differences between the enclosure sizes and the parts used in the production of domestic motors, but these differences are not significant in terms of manufacturing process, use, or consumer perception. The data obtained in the investigation, however, do not permit separate identification of each of the 23 like products as a distinct product line.[12] The narrowest group or range of products which includes the like products for which the Commission was able to otain profit and loss information is motors of not less than 150 horsepower and not greater than 500 horsepower. Thus, we define the domestic industry as those domestic producers who manufacture ac, polyphase electric motors in accordance with NEMA standards of not less than 150 horsepower and not greater than 500 horsepower.

Material injury by reason of LTFV imports

In making our injury determination we considered, among other factors, the following statutory criteria contained in subsection 771(7)(B): (1) the volume of imports of the merchandise subject to the investigation, (2) the effect of imports of such products on prices of like products produced in the United States, and (3) the impact of the imports on the affected domestic industry.[13] We have based our decision on the findings of fact and conclusions of law discussed below.

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[5] Commissioners Moore and Bedell also determined that the domestic industry is threatened with material injury.

[6] The product is provided for in items 682.45 through 682.50 of the Tariff Schedules of the United States (TSUS).

[7] The U.S. Department of Commerce (Commerce) investigation covered imports of polyphase electric motors from Japan during the 6-month period extending from April 1, 1979, through September 30, 1979. The LTFV determination was based on an examination of polyphase electric motors manufactured by Tokyo Shibaura Electric Co. (Toshiba) since approximately 90 percent of the motors exported to the United Sates from Japan during the period of investigation were manufactured by that firm. The weighted average margin for all models compared was 6.7 percent.

[8] The term "ac" refers to alternating current and the term "polyphase" means other than a single phase power source.

[9] Staff Report at A–3.

[10] Staff Report at A–7.

[11] Staff Report at A–7.

[12] Staff Report at A–23.

[13] Tariff Act of 1930, as amended by the Trade Agreemnets Act of 1979, section 771 (19 U.S.C. 1677(7)).

Volume of imports: The majority of the motors imported into the United States from Japan during the period of this investigation were manufactured by Toshiba Corporation.[14] Despite the decline in U.S. consumption between 1977 and 1979, the market penetration of motors imported by Toshiba increased by nearly 30 percent.[15] Toshiba imports continued to increase during the first six months of 1980 to 25 percent above the level during the comparable period in 1979.[16] The share of consumption supplied by other importers also increased from 1977 to the first half of 1980 but their share of total imports remained small. The rise in the level of import penetration from 1977 to the first half of 1980 was accompanied by a substantial increase in all importers' inventories.[17] The growth in inventories is most noticable with respect to Tashiba whose inventories more than doubled from June 1979 to June 1980.[18]

Effect of imports on prices. Price data were supplied to the Commission by Toshiba and one other Japanese firm and by nine domestic manufacturers which account for 90 percent of U.S. production. The data were broken down by type of motor as defined by industry standards (i.e. horsepower range, number of poles and type of enclosure) and by type of customer. The prices collected were for standard, unmodified motors. There are three types of customers in the domestic electric motors market: original equipment manufacturers (OEMs) who incorporate the motors into machinery before it is sold, end users, and distributors who sell to both of the other 2 types of customers. Price comparisons were made on sales by domestic producers' and importers' to OEMs and to distributors. Most U.S. producers' sales are to OEMs and Toshiba's are to distributors, thus, comparisons were also made between these prices. These comparisons reveal underselling in the majority of instances. For most of the types of motors sold to distributors the imported product was priced below the weighted average domestic price and in some instances even below the lowest domestic price of the comparable model.[19]

In sales to the OEM market, Toshiba motors undersold in a few instances. However, in the majority of cases, domestic prices were below those of the imported product.[20] Toshiba's higher prices to OEMs may reflect its policy of not competing with distributors selling Toshiba motors in the OEM market.[21]

In response to the allegations made at the hearing that the Commission price comparisons for distributors and OEMs were invalid because the majority of imports and the domestic products were being sold to different types of customers, the Commission compared Toshiba's distributor prices to the domestic producers' prices for each of 7 standard model types. Even this comparison revealed Toshiba sales below the weighted average domestic prices in 68 of the 86 price comparisons.[22] In the majority of the comparisons, the margins of underselling were more than accounted for by the LTFV margins.[23] Also, in numerous cases, Toshiba prices were even below the *lowest* domestic price to OEM's.[24]

Impact of imports on the affected domestic industry: U.S. production declined by 8 percent during 1977–79 and increased only slightly in the first half of 1980 from the level of production in 1979.[25] Although production capacity increased from 1977 to January–June 1980, capacity utilization decreased from 1977 to 1978 and then returned to its 1977 level in the first half of 1980.[26] U.S. shipments also declined in the number of units sold from 1977 to 1979 and increased slightly in the first half of 1980.[27] Producers' inventories have continued to increase from 1977 to the first six months of 1980.[28]

Peak performance should have occurred in the business cycle of the electrical industry during the period 1977–79.[29] In the electric motor industry, it did not, and more market share has been lost to imports. Toshiba's growing inventories suggest continuing difficulties for domestic producers trying to sell their own sizable inventories at reasonable prices. Profit and loss information was obtained for motors ranging from 150 to 500 horsepower from 5 firms accounting for more than 60 percent of the 1979 U.S. production of such motors.[30] Profits declined from 1977 to the first half of 1980.[31] The ratios of profit to net sales, cost of goods sold to net sales, and selling and administrative expenses to net sales also declined from 1977 to January–June 1980.[32] Employment during the period covered by the investigation remained stable, and wages increased slightly.[33]

The margins of underselling revealed in the questionnaire responses lend support to the allegations made by domestic industry representatives at the hearing that U.S. prices have decreased in an effort to meet competition from LTFV imports.[34] Due to the nature of the market it was impossible to confirm the allegations of lost sales. This difficulty stems from the fact that a significant share of Toshiba's sales is accounted for by distributors whose sales are largely unknow to U.S. producers and can only be obtained through competitive bidding and market intelligence. However, in light of the margins of underselling, rise in inventories and decline in profits we would infer that lost sales exist.

No other causes of injury were alleged during the investigation. We find that the material injury present and threatened must be by reason of the unfairly priced imports.

Conclusion

For the foregoing resons we find that the domestic industry producing ac, polyphase electric motors of not less that 150 horsepower and no greater than 500 horepower is materially injured by reason of the LTFV sales of ac, polyphase electric motors from Japan.

Views of Commissioner Paula Stern

Background

On January 1, 1980, the Commission instituted a preliminary investigation under section 733(a) of the Tariff Act of 1930, as amended, with respect to alternating current (AC), polyphase electric motors of over 5 horsepower but not over 500 horsepower from Japan. This investigation was initiated on the basis of a Treasury Department investigation in which there has not yet been a preliminary determination as to less than fair value sales. As a result of that investigation, the Commission reported to the Secretary of Commerce its determination of a reasonable indication that an industry in the United States is materially injured by reason of

[14] Staff Report at P. A–4.
[15] Staff Report at p. A–35, Table 25.
[16] Staff Report at p. A–35, Table 25.
[17] Staff Report at p. A–13.
[18] Commissioners Moore and Bedell note that the information contained in the record on the historical pattern of increasing import penetration levels and importers' inventory levels supports their determination as to the threat of material injury.
[19] Staff Report at p. A–37.
[20] Staff Report at p. A–38–39.
[21] Staff Report at p. A–38–39.
[22] Staff Report at p. A–38.
[23] Staff Report at p. A–40–53, Tables 27–40.
[24] Staff Report at p. A–38.
[25] Staff Report at p. A–23.
[26] Staff Report at p. A–15.
[27] Staff Report at p. A–17.
[28] Staff Report at p. A–19, Table 12.
[29] Staff Report at p. A–17, Table 10.
[30] Staff Report at p. A–23. Three additional firms submitted profit and loss information. However, this data was not usable since two of the producers did not provide data relative to motor size and the other firm did not provide data for the reduced scope of the investigation.
[31] Staff Report at p. A–23.
[32] Staff Report at p. A–25.
[33] Staff Report at p. A–19.
[34] Staff Report at p. A–36–39 and Transcript of Commission hearing of Nov. 20, 1980, at p. 11–12.

the importation of AC, polyphase electric motors provided for in items 682.41 through 682.50 of the Tariff Schedules of the United States allegedly sold at less than fair value (LTFV).[1]

In June 1980, the Commission received notification that the Department of Commerce (Commerce) had made a preliminary affirmative determination with regard to certain electric motors from Japan but had excluded submersible well pump motors from its investigation.[2] This was the first change in the scope of this investigation. The Commission then instituted this final antidumping investigation on the basis of the scope as defined at that time.

Subsequently, Commerce limited its LTFV determination [3] to an examination of electric motors manufactured by Tokyo Shibaura Electric Co. (Toshiba) which represented approximately 90 percent of the motors exported to the United States from Japan during the period of investigation. This resulted in a further narrowing of the scope of the investigation.

Finally, on October 29, 1980,[4] Commerce and Toshiba agreed to monitoring terms for motors of less than 150 horsepower and Commerce suspended the investigation with respect to those products. Thus, the scope of the Commission's investigation was ultimately reduced by 94 percent.[5]

Determination

The record developed in this investigation compels a conclusion that pursuant to section 735(b)(1) of the Tariff Act of 1930, an industry in the United States is not materially injured and is not threatened with material injury[6] by reason of imports of AC, polyphase electric motors of not less than 150 horsepower and not greater than 500 horsepower (electric motors) from Japan sold at LTFV. The relevant domestic industry consists of the producers in the United States of such electic motors.[7]

Causation

The essentially strong showing of the domestic industry could in itself lead to a negative determination. However, this case fails because there is no demonstrable connection linking the impact of LTFV imports to the performance of the domestic industry.

The level of imports is modest—2.5 percent in 1977 to 4.4 percent by value in January-June 1980.[8] Moreover, the rate of increase of imports is not significant. Imports grew only .5 percent per year between 1977 and 1980. The plans of Toshiba to locate within a year facilities in Houston, Texas, to manufacture all of the motors subject to this investigation will likely reduce the current low level of imports and dampen any possible future growth in the rate of imports.

There were no verified lost sales. Nor were there even allegations of lost sales based on price which can be related to the electric motors under investigation. Indeed, the results of a Commission survey revealed that quality, availability, and delivery all ranked before price as the basis for purchasing Japanese imports.[9]

Furthermore, the notion of imports as a possible cause of underselling leading to price suppression does not hold up. To begin with, the available data on prices are suspect. It is highly questionable whether the pricing data are respresentative; they account for only two percent of total U.S. shipments. This small sample relates only to standard electric motors while the major portion of domestic shipments are non-standard electric motors. The sample also does not include prices to users of electric motors, such as process industries and chemical plants, which account for 15 to 16 percent of U.S. producers' shipments and a very small portion of importers' shipments.[10]

The usefulness of the available price data is further limited by the difficulty of making comparisons between domestic and imported prices. Looking at sales to distributors means looking at only 29 percent of total domestic shipments, but most of the imports from Japan. When we compare distributor prices we find instances of underselling during some time periods. The ratio varies depending on which data are considered—the high or low end of the largest sale price range or the weighted average. In fact, looking at 80 price comparisons, the low end of the largest sale price range shows the imports were priced above the domestic product in 23 comparisons and priced the same in 19. However, these comparisons are not necessarily appropriate in that they reflect the lowest prices of imports but not the lowest prices of domestic motors. This is true because importers give their lowest prices to distributors, while the domestic producers' market strategy is to give their lowest prices to original equipment manufacturers (OEM) in the market.

Logic dictates that is it equally inappropriate to compare prices of imports to prices of domestic products in the OEM portion of the market. If such a comparison is made, however, it is interesting to note that at the low end of the largest sale range, there is *no* underselling. It is also probable that there is no underselling in the user portion of the market.

The best possible comparison to draw is between the price of imports to distributors and domestic prices to the OEMs, since this reflects the actual marketing strategies as to price for both Toshiba and the domestic producers. Comparing the imports' distributor price against the domestic OEM price in the low end of the largest sale range reveals that imports were priced higher than the domestic product in 17 of 35 comparisons during the dumping period examined by Commerce.[11] The ratio drops if you look at the average or high end of the largest sale range, but the results remain mixed.

These mixed results on underselling indicate that what we have here is normal competition. Furthermore, using a price analysis for purposes of demonstrating injury by reason of imports is incomplete without examining the impact of the dumping margin. The question is causation, not merely the existence of underselling. When we compare the instances of underselling shown in import prices to distributors [12] versus domestic prices to OEMs at the low end of the largest sale range against the margins of dumping Commerce found for the sample products, we see that the "by reason of" requirement of the statute is not met.[13] Commerce examined 23 models and found dumping margins on 14 which ranged from 1.6 to

[1] USITC Publication 1037, February 1980.

[2] Commerce reported that the petitioners do not produce submersible well pump motors to any significant degree and had not submitted specific information to Commerce suggesting that they are being sold, or are likely to be sold at less than fair value.

[3] The administering authority's investigation covered imports of polyphase electric motors from Japan entering during the six-month period extending from April 1, 1979 through September 30, 1979. The Department of Commerce examined 23 models and found margins, which ranged form 1.6 to 29.2 percent, or 14 of the 23 models. The weighted average margin for all models compared was 6.7 percent.

[4] Commerce had extended the deadline for a final LTFV determination from September 2, 1980 until Otober 29, 1980.

[5] Based on quantity of shipments in 1979.

[6] With respect to threat, I am in concurrence with my colleagues Chairman Alberger and Vice Chairman Calhoun.

[7] Section 771(4)(a) of the Tariff Act of 1930.

[8] Import penetration by quantity increased from 6.3 percent in 1977 to 8.4 percent in 1979. It was 8.1 percent in January-June 1980.

[9] Staff Report, p. A–54.

[10] At the public hearing, the petitioner and the respondents agreed that additional price data need not be gathered by the Commission. Several days after the vote was originally scheduled, attorneys for Toshiba did raise other price data objections.

[11] Staff Report, tables 34–40.

[12] These prices do not include the distributor mark-up which would be added when head-to-head competition occurs.

[13] Section 735(b)(1) of the Tariff Act of 1930. The analysis holds true, though the ratios change, for the other domestic OEM prices.

29.2 percent, while the dumping margins on the samples examined for underselling ranged from 0 to 29.2 percent. Looking at specific comparisons made by the ITC for purposes of examining underselling, we find, for example, that for open-frame, 4-pole, 150 horsepower motors,[14] there was underselling in two of fourteen comparisons and an average dumping margin of a significant nature. Meanwhile for open frame, 4-pole, 200 horsepower motors,[15] there was underselling in seven of fourteen comparisons and the smallest possible dumping margins. An analysis of the remaining five samples is less dramatic, but they all continue to show no relation between the occurrences or levels of underselling and the occurrence or level of dumping. I am, therefore, led to the conclusion that the occasional underselling is not by reason of the sale of imports at less than fair value but is instead a reflection of a normal market.

Causation between LTFV imports and the conditions in this industry has not been established. Significantly, no causes of injury other than imports were raised by the parties to this investigation. Unlike other cases, the recession is not a causal factor here. This industry is cyclical but its current cycle is out of synchronization with general business conditions. The industry went through a downturn in 1978 and has maintained a steady recovery over 1979 and 1980—even in the face of the continued slight increase in imports.

Material Injury

The fact that the generally negative performance of the electrical equipment industry in the current economic downturn has resulted in very few negative trends in the polyphase electric motor industry is indicative not only of the lack of causation by LTFV imports, but also the lack of material injury to the polyphase electric motor industry.[16] Although domestic production, shipments, and employment in the polyphase electric motor industry were off in 1978, these indicators were generally up in January–June 1980 in comparison with the same period of 1979—production, 10 percent; capacity, 2 percent; capacity utilization, 8 percent; quantity of shipments, 12 percent; average number of employees, 1 percent; total hours, 7 percent; and net profits on overall operations, 14 percent.[17] In fact, extrapolating from 1979 data to reach complete 1980 data, U.S. production, shipments, exports apparent consumption, capacity, capacity utilization, and research and development have gone up relative to 1977, which was a good year for the industry. Exports and research and development have increased dramatically.

Employment has remained steady. During the same period from 1977–1980, U.S. producers' inventories have increased slightly to meet market demand. While inventories of imports have increased, they began with a very small base.[18]

Although capacity utilization declined between 1977 and 1978, utilization of capacity was higher in 1979, which included the dumping period examined by Commerce, than in 1978. Utilization of productive capacity by U.S. producers was even higher in the first half of 1980 than during the first half of 1979.[19] In fact, by extrapolating first-half 1980 data, we find capacity utilization up from the industry's good year of 1977.

Like the pricing data, there are some caveats which must be kept in mind when using the profit-and-loss data. Nine firms representing 90 percent of U.S. production of the subject electric motors in 1979 provided profit-and-loss data relative to the establishment or division within which such motors are manufactured. However, only five of the nine firms were able to provide separate profit-and-loss data for their polyphase motor operations as requested by the Commission's questionnaire. These five firms represent approximately two-thirds of total domestic production of these motors.[20]

The net operating profit for the overall operations of the reporting establishments increased by 4 percent from 1977 to 1979.[21] During the same period there was a decline in net operating profit for their electric motor operations. However, this indicator follows the others in the sense that a recovery and an upward trend were apparent in the first half of 1980.

When you break down the available profit data between 150–200 horsepower and 201–500 horsepower, however, there is an interesting dichotomy. In the 150–200 horsepower category,[22] which included approximately two-thirds of the imports by quantity, profits have dropped only slightly. Meanwhile, in the 201–500 horsepower category, where there are commensurately fewer imports, profits dropped substantially.[23] This tends to confirm the lack of a causal nexus between the economic situation of the industry and the LTFV imports.

Additionally, it appears that most of the decline in the ratio of net operating profit-to-net sales for the overall operations of the nine firms is explained by increases in selling and administrative expenses. This is equally true for the five firms that provided the most relevant data keyed only to the motors subject to this investigation.[24] The firms allocated this figure from the figure for their overally operations. This indicates that the five firms attributed no special impact from imports of polyphase motors to their increase in selling and administrative expenses. Thus, for the single indicator pointing toward material injury, the LTFV imports are not implicated.

Discussion of Past Commission Cases

In explaining the basis of my determination, I believe that it is important to distinguish this investigation from the other antidumping cases decided under the Trade Agreements Act of 1979 in which my determination made the affirmative finding unanimous. An analysis of these cases will reveal that the level of import penetration and LTFV margins were much higher and that the causal link between LTFV imports and conditions in the industry was much greater in the three previous affirmative determinations than in the instant investigation.

The first final affirmative injury determination under the 1979 Act was issued in *Spun Acrylic Yarn from Japan and Italy*, Inv. No. 731–TA–2.[25] In *Spun Acrylic Yarn* the level of import penetration was 16 percent as compared to 8.5 percent in the present investigation,[26] the LTFV margin was 23.19 percent [27] as compared with 6.7 percent, and lost sales due to lower price were confirmed. My determination of injury in the *Spun Acrylic Yarn* investigation was based on the fact that although the volume of imports was relatively low, the impact of such imports was great as manifested by the incidence of lost sales and price suppression.[28] I, therefore, found a sufficient causal link between increased imports and the injury suffered by the

[14] Staff Report, table 34.
[15] Staff Report, table 35.
[16] Section 771(7) of the Tariff Act of 1930.
[17] Staff Report, p. A–56.
[18] Staff Report, pp. A–13, 19–32.
[19] Staff Report, table 9.
[20] Staff Report, pp. A–25–27.
[21] Staff Report, p. A–23.
[22] Staff Report, table 18.
[23] Staff Report, table 20.
[24] Staff Report, table 18 and 20.
[25] *Spun Acrylic Yarn from Japan and Italy*, Inv. No. 731–TA–2, USITC Pub. No. 1046 (March 1980).
[26] *Id.* at A–22.
[27] Id. at A–6.
[28] Id., at Views of Commissioners Paula Stern and Michael J. Calhoun, at 9.

domestic industry. In the *Electric Motors* investigation I have not found evidence which supports a causal link between imports and the conditions in the industry, for unlike *Spun Acrylic Yarn*, there was not confirmed lost sales and little evidence to support price suppression due to LTFV imports. And of course, the health of this industry is much stronger than that which existed in *Spun Acrylic Yarn*.

The second unanimous affirmative injury determination under the 1979 Act was *Sugars and Sirups from Canada*, Inv. No. 731–TA–3.[29] In that case the Commission found that two regional industries extisted. The level of import penetration was only 4.5 percent. However, the LTFV margin was 20.33 percent [30] which is significantly higher than the 6.7 percent average margin in this investigation. There was also substantial underselling even below the lowest domestic prices in *Sugars and Sirups from Canada*,[31] as compared to the underselling in this case which is mixed in the sense that in most instances the import price is not below the lowest domestic price. I, therefore, found a sufficient causal link between imports and injury in *Sugars and Sirups from Canada* based on price suppression and depression and confirmed instances of sales lost due to lower-priced imports.[32] Additionally, on a regional basis the sugar industry was exhibiting a general decline.[33]

The third case in which an affirmative determination was issued is *Portable Electric Typewriters from Japan*, Inv. No. 731–TA–12. In that investigation there was a rapid and substantial increase in imports during the period covered by the investigation [34] in contrast to the smaller and more gradual increase in imports in the *Electric Motors* investigation. The LTFV margins for the three producers accounting for all imports were 4.36 percent, 48.7 percent and 36.5 percent;[35] thus for a majority of the imports the LTFV margins were substantially higher than in the instant case. Also, in marked contrast to the instant investigation, the *Portable Typewriters* investigation revealed sharp declines in domestic shipments, capacity utilization, hours worked and wages. In light of these factors, wide margins of underselling, and substantial loss of sales verified by the staff, I joined the other members of the Commission in concluding that there was a causal link between the imports and the injury experienced by the domestic industry.[36]

In addition to distinguishing these prior affirmative determinations, it is useful to point to the similarities between the instant case and the negative injury determination issued in *Steel Wire Nails from the Republic of Korea*, Inv. No. 731–TA–26.[37] The LTFV margins in *Steel Wire Nails* ranged from 1.3 to 11.5 percent [38] and thus the LTFV margin in this case would fall within the middle of that range.[39] Also, the 7.1 percent level of penetration in *Steel Wire Nails* in roughly comparable to the 8.4 percent penetration level in the instant case. The majority determination of no injury in *Steel Wire Nails* was based on the fact that domestic prices and production levels increased, capacity expanded, inventories remained stable and that the decline in profits experienced by the industry could not be linked to LTFV imports.[40] An important element leading to the conclusion that lost sales data did not provide a causal link between imports and injury was the fact that like the *Electric Motors* case, the nature of the steel wire nail market made verification of lost sales based on price virtually impossible.

Conclusion

Thus, I agree with two members of the four-member majority that there is no threat of material injury to a U.S. industry by reason of LTFV imports from Japan. Moreover, for all the reasons presented above, I also find no present material injury from the imports found to be sold at less than fair value.

Issued: December 12, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

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[29] *Sugars and Sirups from Canada*, Inv. No. 731–TA–3, USITC Pub. No. 1047 (March 1980).

[30] *Id.* at A–13.

[31] *Id.* at A–63.

[32] *Id.*, Views of Commissioners George M. Moore and Paula Stern, at 17.

[33] *Id.* Views of Commissioners George M. Moore and Paula Stern, at 15.

[34] *Portable Electric Typewriters from Japan*, Inv. No. 731–TA–12, USITC Pub. No. 1062 (May 1980).

[35] *Id.* at A–4.

[36] *Id.*, Statement of Reasons for Chairman Catherine Bedell, Commissioners George Moore, Paula Stern, and Michael Calhoun, at 7, 8.

[37] *Certain Steel Wire Nails from the Republic of Korea*, Inv. No. 731–TA–26, USITC Pub. No. 1088 (August 1980). The Commission found a regional domestic industry and issued a negative injury determination in that case based on a 3–2 vote. Commissioners Moore and Bedell dissenting.

[38] *Id.* at A–10.

[39] *Id.*, Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioner Paula Stern, at 14.

[40] *Id.* at 16.

[Investigation No. TA–201–44]

Certain Motor Vehicles and Certain Chassis and Bodies Therefor; Report to the President

December 3, 1980.

Determination

On the basis of the information developed in the course of the investigation, the Commission has determined (Commissioners Moore and Bedell dissenting in part)[1] that automobile trucks, on-the-highway passenger automobiles, and bodies (including cabs) and chassis for automobile trucks, provided for in items 692.02, 692.03, 692.10, 692.11, 692.20, and 692.21 of the Tariff Schedules of the United States (TSUS), are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing articles like or directly competitive with the imported articles.

Background

The Commission instituted the present investigation, No. TA–201–44, on June 30, 1980, following the receipt, on June 12, 1980, of a petition for import relief filed by the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW). The investigation was instituted pursuant to section 201(b)(1) of the Trade Act of 1974 (19 U.S.C. 2251(b)(1)) in order to determine whether—

automobile trucks (except automobile truck tractors and truck trailers imported together); on-the-highway passenger automobiles; and bodies (including cabs) and chassis for automobile trucks (except truck tractors); provided for in items 692.02 and 692.03; 692.10 and 692.11; and 692.20 and 692.21 of the TSUS;

are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the Commission's investigation was published in the **Federal Register** of July 7, 1980 (45 FR 45731), and a notice of changed

[1] Commissioners Moore and Bedell determined that on-the-highway passenger automobiles, provided for in items 692.10 and 692.11 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Commission procedures, accelerating the investigation, was published in the Federal Register of July 22, 1980 (45 FR 48996). On August 4, 1980, the Commission received a petition for similar import relief from the Ford Motor Company. Notice of the receipt of the Ford petition and the Commission's consideration of Ford to be a copetitioner in the investigation already under way was published in the Federal Register of August 21, 1980 (45 FR 55873).

A public hearing in this investigation was held in the Great Hall of the U.S. Department of Justice Building in Washington, D.C., and extended from Wednesday, October 8, 1980, through Saturday, October 11, 1980. All interested parties were afforded an opportunity to be present, to present evidence, and to be heard.

This report is being furnished to the President in accordance with section 201(d)(1) of the Trade Act. The information in the report was obtained from fieldwork and interviews by members of the Commission's staff, and from other Federal agencies, responses to Commission questionnaires, information presented at the public hearing, briefs submitted by interested parties, the Commission's files, and other sources.

Views of Chairman Bill Alberger

Section 201(b) of the Trade Act of 1974 requires that each of the following conditions be met before an affirmative determination can be made:

(1) There are increased imports (either actual or relative to domestic production) of an article into the United States;

(2) The domestic industry producing an article like or directly competitive with the imported article is being seriously injured, or threatened with serious injury; and

(3) Such increased imports of an article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

While I find the first two conditions met for both passenger automobiles and light trucks, I do not find the third to be satisfied, and therefore my determination with respect to these items is in the negative. Medium and heavy trucks do not satisfy the first criterion, and therefore also mandate a negative determination.

In analyzing the above criteria, it is first necessary to define the scope of the domestic industries against which each imported article should be assessed. The issue raised by petitioners of how to treat Canadian imports must then be resolved. Finally, it is possible to analyze whether imports of each particular article have increased within the meaning of the statute, whether the corresponding industry is being seriously injured and whether such increased imports constitute a substantial cause of such harm.

The Domestic Industry

This case raises a number of issues with respect to the scope of the industry or industries to be analyzed. The judgment of how to define an industry depends largely upon the nature of the imported products, the competitive conditions in the domestic market, and the nature of U.S. production. It is therefore difficult to rely exclusively on general legal prescriptions for ascertaining the appropriate industry definition; rather, each determination will necessarily depend heavily on our perceptions of the particular facts of each case. The definition of industry can have a major impact on the question of serious injury, however, and must be made with a clear understanding of both the statutory scheme and Commission precedent relating to the particular fact situation.

The language of section 201 is straightforward. It requires an examination of serious injury to "the domestic industry producing an article like or directly competitive with the imported article;"[2] but as the Commission majority observed in our most recent ruling under section 201,[3] the problems attending the application of this language are substantial. Reasonable persons are bound to differ on the ultimate issue of how to apply this seemingly simple phrase to a particular set of facts. This is especially true in the case of products as multifarious as automobiles and trucks. But the important thing to emphasize is that the definition of an industry under section 201 is based on precise legal standards, and may not necessarily coincide with the generic description everyone uses when they refer to "the auto industry."

The methodology which I believe to be appropriate for delimiting the relevant industries was fully described in TA-201-43 (Mushrooms).[4] Briefly stated, it is as follows:

Since the phrase "like or directly competitive" is clearly expressed in the disjunctive, and since the adjectives "like" and "directly competitive" were not intended to be synonymous or explanatory of each other,[5] the escape clause may be invoked where either type of producers satisfies the statutory requirements of injury under section 201. Thus, our initial task is to draw distinctions where possible between the "like product" to the imported article (i.e., that which is "the same or nearly the same in inherent or intrinsic characteristics")[6] and those which are "directly competitive" with it (i.e., "substantially equivalent for commercial purposes, that is, * * * adapted to the same uses and * * * essentially interchangeable therefor").[7] If these groups of producers can clearly be treated as separate and distinct industries in terms of production, sales, employment, etc., and if such action is consistent with the realities of the marketplace, then a showing of serious injury to either group (assuming increased imports were a substantial cause of such injury) will satisfy the criteria for relief and mandate an affirmative result.

Applying these principles to the facts at hand, I believe we are faced with three separate and distinct industries—in essence any combination of groupings with respect to products either "like" or "directly competitive" with the imported articles yields only three possibilities. These industries could be defined as firms and facilities devoted to the production of (1) all passenger automobiles of the type classified under items 692.10 and 692.11 of the TSUS, (2) light trucks of under 10,000 lbs. gvw (of the type classified as automobile trucks under items 692.02 and 692.03 of the TSUS) and (3) medium and heavy trucks (also of the type classified under 692.02 and 692.03) but not truck tractors and trailers imported together, which we specifically excluded from the scope of our investigation. Since our report covers bodies (including chassis) for automobile trucks, it is also important to point out that we would consider domestic producers of these articles to fall within the same general industry definition (either light trucks or medium/heavy trucks) as the assembled product. I reach this industry segmentation on the basis of the following rationale:

1. There is no persuasive basis on which to segment passenger automobiles into more than one industry, as requested by several importers. While there may be an endless variety of sizes and characteristics, there is no clear dividing

[2] Trade Act of 1974, Section 201(b)(1), 19 U.S.C. 2251(b)(1).

[3] Mushrooms, Inv. TA-201-43, USITC Pub. 1089, Views of Chairman Alberger, Vice Chairman Calhoun and Commissioner Stern, 6-14 (1980).

[4] *Id.*

[5] S. Rep. 93-1298, 93d Cong., 2d Sess., 121-22 (1974).

[6] *Id.*

[7] *Id.*

line between "large autos" and "small autos" for example. Furthermore, all passenger automobiles have substantially similar uses, and there is certainly ample evidence that all are—to a greater or lesser extent) directly competitive. While various government bodies, industry groups and trade publications do subdivide cars into different groups, these classifications are somewhat arbitrary and vary considerably.

2. Light trucks are inherently distinct from passenger vehicles in terms of their characteristics and principal uses. All types are, to some extent, able to carry substantial quantities of freight, materials or supplies. While many are also adapted to passenger transport, they are purchased by a wide variety of consumers for utilitarian purposes. I believe this is enough of a qualitative difference to make them unlike passenger vehicles. Moreover, there is insufficient evidence to conclude that they compete "directly" with passenger vehicles, although they are produced by the major auto manufacturers and sold through automobile dealerships.

3. Medium and heavy trucks, which are not the main focus of this investigation, are essentially distinct from either passenger vehicles or light trucks. The vast majority are commercial vehicles designed for specific commercial purposes. They are produced by a different group of firms and marketed separately (although the major auto companies do have heavy truck divisions).

The testimony and written submissions extensively discussed the question of whether large cars, small cars and various types of light trucks should be classified in separate industries. Some European importers even contend that their products are unique and do not compete with domestic products of any sort. The importers point to the great number of differences between "large" and "small" passenger vehicles. Most propose a classification based upon weight, size, engine specifications, wheelbase and other factors. They contend that it is logical to draw a line somewhere between "large" and "small" cars on this basis—that the auto industry itself draws several classifications based upon these criteria. Furthermore, they purport to demonstrate through consumer surveys and other cross-elasticity studies how demand for these two basic vehicle types differs, thus suggesting that they are not "directly competitive."

I believe that the reasoning which would lead to a subdivision of passenger autos into two or more industries is flawed in many respects. First, the very uncertainty about where to draw the dividing line illustrates vividly that what really exists is a full continuum of products. There is an endless choice of sizes and features. The same basic car body can be given a larger engine and a few optional features, thereby transforming it into a substantially larger car than the stripped-down model. Most domestic producers offer a "full line" of products, from subcompact to large and luxury cars, and all have a range of options that might change their classification. In reviewing the classification of "small" versus "large" autos suggested by one importer,[8] it becomes obvious that one can find more similarity between the largest small car and the smallest large car than between products at either end of the small car spectrum.[9]

Another factor which militates against the segmentation of large and small cars is that all are designed as private vehicles for the principal purpose of transporting passengers. The fact that some might be faster, hold more passengers, or consume less fuel is not something which alters their basic similarity of uses.

Importers also seek to create meaningful distinctions between small and large cars in terms of competitiveness, arguing essentially that consumer surveys show a marked lack of direct competitiveness between these classes. There appears to be an inherent contradiction here, because the same parties cite the shift in demand from large to small cars as an important cause of injury. This shift merely demonstrates why these goods are "directly competitive." In essence, an increase in the cost of owning one size car—brought on by rising fuel costs—has led to increased demand for the other. This suggests a high degree of cross-elasticity. It is true that importers have focused primarily on the "small" end of the market while domestic producers previously seemed content with concentrating primarily on large autos, but this does not alter the fact that these products are "substantially equivalent for commercial purposes" and are "essentially interchangeable."[10] Both importers and domestic producers serve a single—admittedly heterogeneous but nevertheless unitary—domestic market.

A final argument in favor of treating passenger autos as one industry is the notion, referred to in our last decision,[11] that it is difficult to analyze profit and loss data, employment, costs and other factors on a model-by-model basis. While few production lines turn out more than one type of vehicle, some produce a particular type with different options that may lead to different classifications. As already noted, the major domestic firms produce a full line, and this leads to nightmarish problems in attempting to allocate profits, production costs and employment data (many of the executive and product development personnel work on both groups of products). Given that no other factors argue in favor of further segmentation, this practical difficulty merely emphasizes the inappropriateness of such a recommendation.

With respect to trucks, I am not persuaded by the petitioners' arguments regarding the likeness of small trucks, vans and light utility vehicles to passenger automobiles. Not only do they differ from passenger autos in design shape and engineering, but most of these vehicles have as a primary use the transportation of materials. While they may also be used quite frequently for the sole purpose of carrying passengers, the capacity for use in carrying supplies or equipment is the obvious feature which prompts ordinary consumers to purchase a truck-like vehicle. A dealer with experience in truck sales acknowledged in our hearings that light trucks and passenger vehicles had little if any interchangeability.[12] Moreover, the record before us is insufficient to conclude that there is high cross-elasticity of demand between cars and light trucks or that the products are "commercially equivalent." Therefore, I cannot find them to be "like or directly competitive" with passenger autos.

Medium and heavy trucks are overwhelmingly used as commercial vehicles, sold through separate outlets and purchased by an entirely different class of consumers than light trucks. I find them to constitute a separate industry, although the precise scope and definition are not essential in this case because they are not alleged to be the recipient of any injury.

The Question of Canadian Imports

Petitioners argued that imports from Canada, which are produced almost entirely by subsidiaries of the major U.S. firms, should be excluded from the

[8] Prehearing brief of Toyota Motor Sales, U.S.A., Inc., Exhibit 1.

[9] An example would be the Ford Granada, which is classified as a small car, but which is closer to the Dodge Diplomat—a large car—than it is to the subcompact Chevette in terms of size and gas mileage.

[10] S. Rep. 93-1298, 93d Cong. 2d sess. 122 (1974).

[11] Mushrooms, Inv. TA-201-43, USITC Pub. 1089 at 11 (1980).

[12] Hearing Transcript at 505-07.

scope of this investigation. They maintain that U.S. and Canadian manufacturing operations are part of a single industry, and that the Automotive Products Trade Act of 1965 (APTA),[13] implementing the U.S.-Canadian automotive agreement,[14] recognizes this fact.

While the United Auto Workers witnesses acknowledged that exclusion of Canadian imports from the investigation itself was not necessarily required,[15] their position throughout the investigation was that Canadian imports should be excluded from any remedy recommendation either in explicit terms or by virtue of the nature of the goods subject to relief, because such imports are noninjurious and because of the APTA, the U.S.-Canadian agreement, and the specific GATT waiver pertaining to such agreement. Ford Motor Co., on the other hand, maintains that "In determining the degree to which imports have increased and the extent to which imports are a cause of the U.S. industry's serious injury, vehicles produced in Canada and shipped to the United States should not be considered 'imports.'" [16]

Had the Commission made an affirmative determination, it could have fashioned a remedy recommendation that, in effect, did not reduce the volume of imports from Canada or increase tariff levels on such goods. Since Canadian imports have declined in recent years, this could have been accomplished by recommending tariff-rate quotas or quantitative restrictions allocated on a country-by-country basis and based upon imports during the most recent representative period. Such a recommendation would be permissible and consistent with Commission precedent.[17] Moreover, the purpose of our recommendation is to provide guidance for the President and either of these recommendations would be consistent with his powers to proclaim effective relief under section 203(a).

Despite the Commission's implied power to adopt a remedy recommendation that disproportionately affects goods of a particular foreign origin because they are perceived to be more injurious, I do not believe we have authority to propose a remedy which expressly discriminates. Section 203(k)(1) empowers the President to take discriminatory actions which do not comply with the Most Favored Nation requirements of the Trade Act, but he is first required to consider the effect of such action on our foreign relations, both economic and political. Obviously, such considerations by the Commission are wholly inappropriate.

With respect to the more important question of whether Canadian imports should be considered imports for the purposes of assessing the merits of this case, I believe the answer must be affirmative. Nothing in the APTA or the automotive agreement itself specifically exempts Canadian products from the scope of Section 201. The APTA authorized the President to remove all customs duties on specified Canadian motor vehicles and original equipment and parts. Since this applied discriminatorily to Canadian imports alone, a waiver of MFN obligations under Article I of GATT was necessary.[18] This waiver did not address the question of exemptions from escape clause actions. Therefore, the contention that any of these provisions eliminate distinctions between Canadian and domestic automotive products for all purposes of U.S. trade law is simply not justified. While the automotive agreement and the APTA were clearly designed to eliminate unnecessary restraints on the creation of what is essentially a common market, section 301 of the Act made it plain that the elimination of duties was to be considered a tariff concession that would not preclude imposition of import relief.[19] The Report of the Senate Committee on Finance on the APTA seems to endorse this position. It states that:

> The agreement permits either Government to take action consistent with its obligations under Part II of the General Agreement on Tariffs and Trade (GATT) (art. III). Part II of the GATT includes provisions permitting contracting parties to take antidumping measures and escape clause actions. In this connection it should be made clear that nothing in this agreement nor in the enabling legislation acts to dull the operation of our remedial statutes.[20]

Commission precedent under Section 201 generally supports the conclusion that all imports should be treated alike for purposes of our investigation. Although imports by domestic producers have been considered differently in some cases with respect to the issue of causation, it has always been the practice of this Commission to consider all imports in determining whether there are "increased imports," and not to count them as domestic production in considering injury. This approach is consistent with the scheme of Section 201, which is based upon GATT concepts and is intended to be nondiscriminatory in nature. Moreover, the overall purpose of Sections 201–203 is to protect domestic productive resources—i.e., employees, physical facilities and capital.[21] Much of the legislative history of these sections is replete with expressions of concern for American workers and the utilization of domestic productive resources. In fact, the legislative history states that the Commission must "necessarily take into account imports from all countries." [22] Of course, if the products were only exported for final assembly and were actually manufactured domestically, they could be counted as domestic production rather than imports. That is not the case here.

Increased Imports

Total U.S. imports of the types of motor vehicles included in the scope of this investigation increased substantially from 1975 through January–June 1980. From just over 2.4 million units in 1975, imports of those vehicles peaked in 1978 at just under 3.8 million units, but then declined to 3.6 million units in 1979. During January–June 1980 imports of all such vehicles were about 9.5 percent higher than the levels recorded in the corresponding period of 1979.

Trends in imports of both passenger automobiles and light trucks reveal an overall increase during 1975–79. Imports of passenger automobiles rose from just over 2 million units in 1975 to over 2.9 million units in 1978, an increase of 43 percent. In 1979 imports of passenger automobiles fell by about 4 percent from 1978 levels to about 2.8 million units. Imports of light trucks and cab/chassis increased from 374,609 in 1975 to a peak of 859,500 units in 1978, before falling by about 6.5 percent in 1979 to 803,700 units.

Comparison of U.S. imports of automobiles and light trucks and cab/chassis during January–September 1979 with the corresponding period of 1980 reveal similar trends for the two motor vehicles segments. Imports of passenger automobiles increased from 2.2 million units in January–September 1979 to 2.5 million units in the corresponding period of 1980 or by 13.6 percent. Imports of trucks and cab/chassis increased from 472,320 units during January–September of 1979 to 531,012 units in the

[13] 19 U.S.C. 2001.

[14] Agreement Concerning Automotive Products Between the Government of the United States and the Government of Canada, 17 U.S.T. 1372, T.I.A.S. No. 6093 (1965).

[15] Hearing Transcript at 112.

[16] Prehearing brief of Ford Motor Co., at 24.

[17] *See*, e.g., Nonelectric Cooking Ware, Inv. TA-201-39, USITC Pub. 1008 (1979).

[18] GATT, Basic Instruments and Selected Documents (14th Supp.) 38 (1966).

[19] 19 U.S.C. 2011.

[20] S. Rep. 782, 89th Cong., 1st Sess., 7 (1965).

[21] H. Rep. 93-571, 93rd Cong., 1st Sess., 46 (1973).

[22] Id.

corresponding period of 1980, or by 12.4 percent.

Clearly, imports of automobiles and light trucks (including cab chassis) are each increasing in terms of the statute. Imports of medium and heavy trucks, on the other hand, have declined significantly throughout the period of investigation, both absolutely and relative to domestic production. The market share of imports has steadily declined from about 18 percent in 1976 to below 8 percent in 1979. Thus, with respect to this industry, the first criterion is not met.

Serious Injury

To determine serious injury, Section 201(b)(2) of the Trade Act requires that "the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry.

We have also considered the decline in domestic sales and the increases in inventories.

There can be little argument that the two domestic industries under primary investigation (passenger autos and light trucks) manifest serious injury when all of these factors are analyzed. While most importers argued that only the "large car" segment is being injured, the facts and testimony before us overwhelmingly demonstrate that the passenger automobile industry in the aggregate is in serious difficulty. Data for light truck production yields a similar analysis. The injury which I find to exist commenced in early 1979, but has become most pronounced in the first six months of 1980. When this latter period is examined, the declines in production, employment, profitability and sales are devastating. While sales have rebounded slightly in the most recent quarter, third quarter losses are reported to be of record proportions. Thus, I find both industries to be suffering "serious injury" within the meaning of the statute. The following facts lend support to this finding:

In the aggregate most of the indices of the U.S. automobile producers' performance during the period of investigation reveal a healthy picture from 1976 through 1978 and rapidly declining trends thereafter. Domestic production of passenger automobiles reached a peak of slightly over 9.1 million units in 1978, but by 1979 production had declined to 8.4 million units and continued to decline during January–June 1980. Domestic production of light trucks declined from 3.3 million units in 1978 to 2.7 million units in 1979, or by 17 percent, and further declined by 60 percent in January–June 1980. Domestic sales, as reflected in data on total shipments, followed the trends in production—increasing substantially until 1978 and then declining. The decline in shipments for passenger autos was almost entirely due to the drop in sales of large cars. Subcompact and compact car shipments actually increased throughout 1979–80.

Trends in domestic capacity to produce passenger automobiles as compared to those for light trucks differed somewhat during the period of investigation. Domestic capacity to produce passenger automobiles of all sizes fluctuated very little from 1975 through January–June 1980. Capacity to produce automobiles increased slightly from 10.7 million units in 1975 to a peak of 10.8 million units in 1977, but then declined slightly in every period through the first half of 1980. During the period of investigation there were notable shifts in capacity to produce different sizes of automobiles. The capacity of domestic producers to build larger-size cars declined, while their ability to produce smaller-size cars, especially subcompacts, increased in response to the shift in demand toward smaller, more fuel-efficient cars. Domestic capacity to produce light trucks increased steadily from 2.7 million units in 1975 to 3.2 million units in 1979. However, during January–June 1980, capacity to produce such vehicles declined by about 9.3 percent from the corresponding period of 1979.

Capacity utilization figures indicate significant idling of productive facilities during the period of investigation. Utilization of domestic capacity to produce passenger automobiles reached a high of 86.2 percent in 1978, declined to 79.5 percent in 1979, and continued to fall to 66.5 percent during January–June 1980. Utilization of domestic capacity to produce light trucks followed a trend similar to that for automobiles, but the downturn in utilization of light truck facilities after 1977 is even more pronounced than for automobiles. Capacity utilization of domestic light truck facilities was over 100 percent as recently as 1977, but by January–June 1980 had dropped markedly to 41.5 percent.

Since most U.S. producers do not maintain inventories, it is necessary to look at dealers' inventories of new vehicles if this factor is to be assessed. While the absolute figures do not reveal any particular trend, the ratio of inventories to annual shipments has been increasing since 1978. This is particularly true of large cars, the vehicles which cost the most to carry on inventory because of their higher sales prices.

Financial data provided by domestic firms clearly reveal the inability of a significant number of firms to operate at a reasonable level of profit. From 1978 to 1979, the net operating profit for U.S. producers on their U.S. automotive operations fell by 76 percent from $5.6 billion to $1.3 billion, and continued to fall to a net loss of $2.9 billion in January–June 1980. The major losses recorded in these recent periods are indicative of the financial status of most of the producers of passenger automobiles and light trucks. During January–June 1980 the only U.S. producer to report a profit was Volkswagen of America. The declining financial position of the U.S. motor vehicle manufacturers is also revealed in the substantial drop in cash flow. U.S. producers' cash flow from operations declined from $8.9 billion in 1978 to $5.1 billion in 1979, and then to a negative $356 million in January–June 1980.

Similarly, employment patterns declined during 1979 and the first half of 1980. The average number of all employees in U.S. establishments producing passenger automobiles and light trucks declined from 1,003,430 in 1978 to 971,929 in 1979 and then in January–June 1980 declined again by about 22 percent below the level recorded for the corresponding period of 1979. Other employment indices, including the average number of production workers, man-hours worked, and output per 1,000 man-hours, mirror trends for all employees.

In April 1980, the U.S. Department of Transportation issued projections of employment changes in the auto industry based on several assumptions, including peak consumption levels of 11 million units per year, employment levels reached in 1978/79, and a return to a 15 percent import penetration level. Based on these assumptions, the report indicates that a decline in employment of auto manufacturers due to productivity gains could be as great as 150,000 by 1985. Employment gains of about 48,000 jobs due to changes in the market by 1985 offset somewhat the 150,000 loss related to increased productivity, indicating a total projected decline in employment resulting from both productivity gains and changes in the market of about 100,000 from 1978/79 levels. Thus, with increased demand for automobiles and light trucks and substantially reduced imports,

employment in these industries would still not return to previous levels.

There is no doubt that both the passenger automobile and light truck industries are seriously injured.

Substantial Cause

While I find the domestic industries producing passenger automobiles and light trucks to be suffering serious injury within the meaning of Section 201(b)(1), I do not find that increased imports are a substantial cause of such injury. The statute defines the term "substantial cause" as "a cause which is important and not less than any other cause." [23] Applying this test, I have found the decline in demand for new automobiles and light trucks owing to the general recessionary conditions in the United States economy to be a far greater cause of the domestic industries' plight than the increase in imports. While I also believe that the rapid change in product mix necessitated by the shift of consumer preference away from large, less fuel-efficient vehicles is an important cause of the present injury, I do not view this factor to be a more important cause than increased imports.

The Decline in Overall Demand

One noticeable factor in this case is the apparent lack of correlation between the growth in import volume and the state of health of domestic producers. Our investigation reveals that the period 1976–78 was characterized by strong domestic sales and record profits.[24] Yet it was during this period that the largest increase in total imports occurred. (Passenger automobile imports increased from 2 million units in 1975 to 2.9 million in 1978, while light truck imports grew from 375,000 in 1975 to 859 in 1978.) Imports actually declined in 1979, when the recession began in earnest. Even Japanese imports grew most dramatically in the prior period, and remained about steady in 1979. While Japanese imports have increased by a more alarming rate in the first 6 months of 1980 (by about 200,000 units over the comparable period of 1979), imports from other sources have declined. This juxtaposition of events becomes even more curious when we consider the testimony of petitioners that the injury began in early 1979 and has deepened over the past 18 months.[25] Given the relatively slight import growth in that period, and considering how healthy the monthly sales figures were before 1979, one obviously begins to look for other explanations of the current injury.

One figure that stands out in stark contrast to the rather marginal import increases for 1979–80 is the very large decline in overall consumption of both passenger autos and light trucks. Consumption of passenger autos fell by almost 1 million units in 1979, a decline of 7.8 percent. Moreover, consumption in January–June 1980 was 1.1 million units or 18.5 percent below the figure for January–June 1979. For light trucks the decline in 1980 was over 700,000 units or 19.3 percent, and the January–June 1980 figure was 47 percent below the comparable figure in 1979. It is therefore clear that domestic producers faced seriously declining demand in the period January 1979–June 1980. While imports did improve their market share substantially during this period by maintaining constant or slightly increasing volume in the face of falling demand, the downturn in demand itself is obviously a variable factor which must be independently assessed for its impact on U.S. producers.

At the most fundamental level, then, it is useful to allocate the decline in domestic producers' shipments in 1979 and 1980 into two basic components: that portion accounted for by the reduced overall consumption of autos and light trucks because of general economic conditions, and that portion attributable to the increasing market share of import vehicles. The relative magnitude of these two causes can be assessed by comparing the actual decline in domestic shipments to the decline that might have occurred if imports had not increased their market share in 1979–80, i.e., if imports and domestic vehicles had shared equally in the overall decline in sales. The difference between these two figures represents the maximum potential loss in sales due to increased imports. This amount can then be compared to the volume of loss attributable solely to reduced demand. The following tables, based upon data available in the Commission's report, reveal the results of this exercise for 1979 and for January–June 1980:

Table 1.—*Passenger Automobiles: U.S. Apparent Consumption, U.S. Producers' Domestic Shipments, Imports for Consumption, Imports' Share of Consumption, 1978 and 1979, and Relative Increases or Declines in Imports and Producers' Shipments in 1979, if the Share of Imports Is Held Constant at the 1978 Level*

Item	1978	1979
Actual 1978 and 1979 data:		
Apparent consumption—1,000 units	11,185.0	10,315.3
U.S. producers' domestic shipments—1,000 units	8,256.9	7,518.2
Imports for consumption—1,000 units	2,928.1	2,797.1
Ratio of imports to consumption—percent	26.2	27.1
Estimated data for 1979, holding import share of consumption constant at 1978 level and using actual 1979 consumption data:		
Imports, if held at 1978 share of consumption—1,000 units	(1)	2,702.6
U.S. producers' domestic shipments, if held at 1978 share of consumption—1,000 units	(1)	7,612.7
Net change from 1978 to 1979:		
Total actual decline in U.S. producer's shipments—1,000 units	(1)	738.7
Net decline due to increasing import share—1,000 units	(1)	94.5
Net decline due to declining demand—1,000 units	(1)	644.2
Share of declining shipments due to declining demand—percent	(1)	87.2

[1] Not applicable.

Source: Compiled from data presented in table 19 of the staff report.

Table 2.—*Passenger Automobiles: U.S. Apparent Consumption, U.S. Producers' Domestic Shipments, Imports for Consumption, Imports' Share of Consumption, January–June 1979 and January–June 1980, and relative increases or declines in Imports and Producers' Shipments in January–June 1980, if the Share of Imports Is Held Constant at the January–June 1979 Level*

Item	January–June 1979	January–June 1980
Actual January–June 1979 and January–June 1980 data		
Apparent consumption—1,000 units	5,80.7	4,731.7
U.S. producers' domestic shipments—1,000 units	4,369.8	3,099.9
Imports for consumption—1,000 units	1,437.9	1,631.8
Ratio of imports to consumption—percent	24.7	34.5
Estmated data for January–June 1980, holding import share of consumption constant at January–June 1979 level and using actual January–June 1980 consumption data:		
Imports, if held at January–June 1979 share of consumption—1,000 units	(1)	1,168.7
U.S. producers' domestic shipments, if held at January–June 1979 share of consumption—1,000 units	(1)	3,563.0

[23] Trade Act of 1975, Section 201(b)(4), 19 U.S.C. 2251(b)(4).

[24] This fact was essentially acknowledged by domestic industry representatives during the hearing.

[25] Hearing transcript at 124–125, 177–78.

Table 2.—*Passenger Automobiles:*—Cont.

Item	January–June 1979	January–June 1980
Net change from January–June 1979 to January–June 1980:		
Total actual decline in U.S. producers' shipments—1,000 units	(1)	1,269.9
Net decline due to increasing import share of consumption—1,000 units	(1)	463.1
Net decline due to declining demand—1,000 units	(1)	806.8
Share of declining shipments due to declining demand—percent	(1)	63.5

[1] Not applicable.

Source: Compiled from data presented in table 19 of the staff report.

Table 3.—*Light Trucks and Cab/Chassis Therefor: U.S. Apparent Consumption, U.S. Producers Domestic Shipments, Imports for Consumption, Imports' Share Consumption, 1978 and 1979, and Relative Increases or Declines in Imports and Producers' Shipments in 1979, if the Share of Imports is held Constant at the 1978 Level*

Item	1978	1979
Actual 1978 and 1979 data:		
Apparent consumption—1,000 units	3,909.3	3,155.1
U.S. producers' domestic shipments—1,000 units	3,049.8	2,351.4
Imports for consumption—1,000 units	859.5	803.7
Ratio of Imports to consumption—percent	21.9	25.5
Estimated data for 1979, holding import share of consumption constant at 1978 level and using actual 1979 consumption data:		
Imports, if held at 1978 share of consumption—1,000 units	(1)	691.0
U.S. producers, domestic shipments, if held at 1978 share of consumption—1,000 units	(1)	2,464.1
Net change from 1978 to 1979:		
Total actual decline in U.S. producers' shipments—1,000 units	(1)	698.4
Net decline due to increasing import share—1,000 units	(1)	112.7
Net decline due to declining demand—1,000 units	(1)	585.7
Share of declining shipments due to declining demand—percent	(1)	83.9

[1] Not applicable

Source: Compiled from data presented in table 20 of the staff report.

Table 4.—*Light Trucks and Cab/Chassis Therefor: U.S. Apparent Consumption, U.S. Producers Domestic Shipments, Imports for Consumption, Imports' Share of Consumption, January–June 1979, and January–June 1980, and Relative Increases or Declines in Imports and Producers' Shipments in January–June 1980, if the Share of Imports is held Constant at the January–June 1979 Level*

Item	January–June 1979	January–June 1980
Actual January–June 1979 and January–June 1980 data:		
Apparent consumption—1,000 units	1,943.0	1,014.7
U.S. producers' domestic shipments—1,000 units	1,181.1	58.9
Imports for consumption—1,000 units	442.3	426.8
Ratio of imports to consumption—percent	22.7	42.1
Estmated data for January–June 1980, holding import share of consumption constant at January–June 1979 level and using actual January–June 1980 consumption data:		
Imports, if held at January–June 1979 share of consumption—1,000 units	(1)	230.3
U.S. producers' domestic shipments, if held at January–June 1979 share of consumption—1,000 units	(1)	784.4
Net change from January–June 1979 to January–June 1980		
Total actual decline in U.S. producers' shipments—1,000 units	(1)	593.2
Net decline due to increasing import share of consumption—1,000 units	(1)	196.5
Net decline due to declining demand—1,000 units	(1)	396.7
Share of declining shipments due to declining demand—percent	(1)	66.9

[1] Not applicable.

Source: Compiled from data presented in table 20 of the staff report.

I believe that these tables demonstrate graphically why imports are not a "substantial cause" of either industry's present malaise. They suggest that declining demand accounted for over 80 percent of the net decline in U.S. producers' domestic shipments of both automobiles and trucks from 1978 to 1979, as compared with less than 20 percent of the decline in U.S. producers' domestic shipments being attributable to imports' increasing share of U.S. consumption. Between January–June 1979 and January–June 1980, about two-thirds of the decline in U.S. producers' domestic shipments was attributable to declining demand and only a third was due to the increased share of the U.S. market accounted for by imports. Thus, even if the import share had been held constant during these critical 18 months, and even if all of those sales which went into the increased import share had instead gone to U.S. producers, domestic firms' sales still would have fallen by over 80 percent of their actual decline in 1979 and by over 60 percent of their actual decline in January–June 1980. While the legislative history cautions against the application of a pure mathematical test, it is necessary to assess the relative impact of these factors, and I think these percentages reveal why one is so overwhelmingly greater than the other.

Petitioners would perhaps dispute the conclusions I draw from the above tables because the tables fail to allow for the theory that an import increase in the earlier period of 1976–78 could be accountable for injury which did not become manifest until 1979. However, even if average imports, consumption and domestic shipments for 1976–78 are compared to the 1979 figures, the decline in demand is still greater than the import factor. Moreover, the above tables really account for the overall import increase since 1975, because they postulate the overall effect of the increased *market share* of imports caused by a drop in domestic sales after three years of steady import growth. Thus, the above analysis gives an accurate picture of the demand *and* import factors since 1975.

It has been argued in this case that the downturn in demand is itself a result of several factors, and that each should be assessed individually to determine whether any single factor is greater than increasing imports. To consider demand in the aggregate, the argument goes, is to cumulate artificially what are clearly separate causal elements in a manner inconsistent with the purposes of legislative history of Section 201. Among the separate and identifiable causes mentioned in this case are inflation, unemployment, rising interest rates, and higher energy costs. Undoubtedly, all of these factors played a part in bringing about the present recession in new vehicle sales. Supporters of the petition contend that none of these factors *alone* played as great a role in bringing about the injury as increasing imports. In fact, the UAW brief contends that increasing imports brought on much of the recession, and so the recession should be viewed as an effect rather than a cause.

All of these contentions seek to isolate and weigh separately the various components of a general economic downturn. In reality, most of the factors mentioned above have worked in unison to bring about what is commonly termed a "recession." Inflation in new vehicle prices coupled with higher credit rates have acted together to drive up the total costs of new motor vehicles. Interest rates have played a particularly important part in the volume of auto sales, because these are long-term consumer durable purchases where credit financing is the norm. Not only have transaction prices for new vehicles and monthly payments for loans increased, but credit has become

"tighter," and the refusal rate on auto credit applications has grown. Unemployment and general inflation have acted to reduce the real disposable income of the average consumer, and a normal reaction has been to delay many long-term capital outlays.

All of these phenomena are part and parcel of a generalized recession, which is normally defined as a period of reduced economic activity, and which can be brought on by a multitude of factors. Recessions are often characterized by rising prices, high interest rates and unemployment. But to say they are comprised of a multitude of causes is not to say that reduced demand in a recession cannot be cited as a single cause for purposes of section 201. In fact, I have cited this very factor in several past cases,[26] particularly where we were considering highly cyclical industries which fluctuate with the general economy. The reason for such a policy is readily apparent; if decline in demand for the product is a consequence of a general economic downturn, then the inevitable recovery from the recession will restore health to the industry. This is precisely what happened to the automobile industry after the downturn in 1974–75. Cyclical downturns in the economy are to be expected, and must not force a reliance on unnecessary import remedies. The problem which auto producers confront is one which confronts many sectors of the economy (the building industry, for example), and it cannot be solved by import relief.

Of course, it is possible for imports to be a "substantial cause" of serious injury or threat thereof during a recession, but only where the absolute or relative increase is of sufficient magnitude to outweigh or equal the effects of the recession itself. As the previously cited tables demonstrate, that is not the case in the present investigation.

The Shift in Demand

A general understanding of how purchasers are reacting to changes in the marketplace is helpful in assessing the significance of the shift in demand and Detroit's reaction to it. With the high cost of new cars and high interest rates seriously affecting consumer confidence, it appears that a number of would-be purchasers are keeping their vehicles longer. This is verified by our information regarding the average age of motor vehicles.[27] Such data shows a substantial change in buying habits from the days when trade-ins were encouraged every 2 or 3 years. At the same time, the rising cost of fuel creates a shift in demand, so that consumers who do have the economic means to make purchases want a more fuel-efficient model. Some consumers perhaps see the rapid improvements in fuel economy and decide to delay purchases another year or two until their favorite models have substantially better mileage ratings. In short, the rapid changes in product mix may be creating some of the buying uncertainty. The shift to smaller cars also affects the trade-in value of used cars, which in turn increases the cost of purchasing a new model. All of these problems result in a general reluctance to enter the market until prices and credit rates stabilize, general economic conditions improve, and buyers become convinced that the new generation of products are sufficiently fuel-efficient and well made.

This theory of consumer behavior explains much of the current recessionary difficulty, but it also raises the inevitable question of whether shift in demand to smaller cars is itself a more important cause of serious injury than increased imports. The facts speak for themselves about the size of this change in consumer preference.[28] One of the difficulties in assessing such a factor quantitatively is that it is inextricably bound together with the increase in imports. While a shift from big to small is conceptually different than a change from domestic to imported, the fact is that two-thirds of the recent increase in small car sales has accrued to the benefit of importers. Ultimately, one becomes involved in a tautological debate about whether increased imports of small cars are an effect of the shift in demand or the explanation for it. Thus, it is only possible to make certain qualitative judgments about the shifting product mix within the domestic industry itself.

Ordinarily, the shift to another product within the same industry should not necessarily be injurious to that industry. However, the lead times associated with introducing new models and the magnitude of capital investments required make the auto industry unique. In order to be able to accommodate a shift, they must anticipate it by 3 to 5 years. Industry estimates of the need to alter production between 1975 and 1980 did not accurately predict how fast Americans would abandon their large cars. Due largely to unforeseen events such as the Iranian revolution and subsequent oil shortage, and because of the lead-time problem associated with auto production, U.S. producers' plans for expanding small car output lagged far behind the market and its needs. In fact, Ford Motor Co. had made a conscious decision not to downsize its entire fleet as far back as 1976, and instead concentrated on creating the entirely new Escort/Lynx model. Thus, Ford found itself with little flexibility to expand small car production when market forces changed, and in addition found itself needing to accelerate capital expenditures and squeeze them into a shorter time-frame in order to react to sweeping changes in consumer preference. Chrysler found itself in much the same situation, but it received substantial Federal support which helped to offset some of its capital expenditures. Moreover, its small car plans were further along than Ford's, although Chrysler still had excess large car capacity. Only General Motors, with superior capital resources, was in a position to face the trend toward smaller cars. Its downsizing was well along, and it had substantial numbers of small car models in production.

Clearly then, the rapid transition to smaller autos and trucks disturbed U.S. producers' plans for a slow, orderly transition. They had hoped to finance their plans for new, fuel-efficient models through the profits on large autos. Without these profits being generated, they found themselves incurring huge capital costs when they could least afford them. Our investigation also reveals that the profit margin on small cars has traditionally been much less, so the industry found itself shifting into a product line which resulted in a lower ratio of net profits to sales. Yet they were not producing such models on sufficient economies of scale to yield the type of profits that sales of large cars—loaded with expensive "extras"—could produce.

All of these factors unquestionably affected the profit picture of U.S. firms. Moreover, the carrying costs to dealers incurred from having high inventories of large cars has also been injurious, especially with the higher interest rates. A record number of dealers have gone out of business since 1979. Thus, the shift in demand must be viewed as an "important cause" of injury separate and apart from the shift to imports. Many of the industries' costs would have been incurred even if import competition had not existed, because simple economics dictated the change in

[26] See, e.g., Machine Needles, Inv. TA–201–38, USITC Pub. 936 at 22 (1974). Unalloyed Unwrought Zinc, Inv. TA–201–31, USITC Pub. 894 at 17, 19 (1978). Citizens Band (CB) Radio Transceivers, Inv. TA–201–29, USITC Pub. 852 29 (1978).

[27] Prehearing Report to the Commission and Parties, issued September 10, 1980, at A–134.

[28] *Infra* A–70 through A–71.

consumer preference. However, I do not believe that the problems associated with this shift in demand should be considered more important than the relative increase in imported products. First, there is the previously mentioned fact that two-thirds of the growth in small cars has accrued to the benefit of imports. Some have suggested that this merely means imports, particularly Japanese vehicles, were better situated to capitalize on the shift in demand. While this is certainly true, it does not alter the fact that the transition of dometic producers to smaller vehicles was much less profitable in the short run because a disproportionate number of small car sales were going to importers. Were it not for the growing volume of imported small cars, Detroit could have undergone its present transformation more profitably and perhaps more dramatically. But the awareness that expanding small car output might not have expanded new car sales certainly impacted upon corporate decision-making regarding small vehicles. Also, U.S. firms have found themselves unable to charge sufficient markups on their small models because of import competition. Thus, I believe imports were an equal or greater problem for the industry to confront than the mere transition to small cars.

I recognize that in numerical terms the shift to smaller models has been greater than the increase in imports. Our own staff has concluded that this is so.[29] However, I think this is a statistic which is highly unreliable and misleading. It depends upon what one classifies as "small cars," an issue on which there are a number of viewpoints. Some U.S. compacts are not really comparable in terms of size or fuel mileage with imported models, so the comparison is not altogether justified. This is why I have relied on a qualitative rather than a quantitative assessment of the relative importance of these two causal factors.

Finally, there may be some implication from the record in this investigation that we should give greater weight to the shift in demand as a cause because the industry brought injury upon itself by refusing to recognize in a timely manner the long-term change in consumer preference away from "gas guzzlers." This "self inflicted injury" theory has superficial appeal. It appears to be popular among a large segment of the public. However, it ignores the fact that large car sales were exceedingly healthy in the period 1976–78. Events such as the revolution in Iran and the sudden changes in our Nation's energy policy after decades of price regulation are what disturbed the pattern. The auto producers now see the inevitability of the future and are adjusting to meet it, but I cannot find their own management misjudgments or lack of planning to be superseding causes of injury. The long-standing obsession in the United States with large automobiles has many explanations. It resulted in large part from Federal price controls that held the price of gasoline at a fraction of the world price, a federally funded highway system that encouraged use of large, comfortable vehicles, and a national affluence that led us to lose sight of our true resource limitations. After the initial scare of gasoline lines and shortages in 1974, the American consumer flirted with a shift to small cars. The Government considered higher gasoline taxes, tough fuel economy standards and an overall national energy policy. Most logical steps were deferred, and the average American consumer went back to demanding large, fuel-inefficient vehicles. The auto companies had shifted some production to smaller cars, but were forced to use large rebates to sell many of those models in the face of a quick shift in consumer tastes back to larger cars. Thus, the auto industry has had considerable difficulty in judging fickle consumers wishes. While it is possible to criticize the auto industry for a lack of total commitment in advertising and merchandising of smaller cars or a failure to recognize the inevitable long term consequences of energy scarcity, the fact remains that the American consumer was not ready for the change until 1979. When gas prices abruptly doubled to beyond the magic $1.00 per gallon barrier and long lines returned, the average consumer reacted. Sales of big cars plummeted. Sales of small cars increased, but not in sufficient quantities to approach the decline in large car sales. This time everyone seems to agree that fuel efficiency has become one of the most important criteria for potential car buyers, and will probably remain so.

Summary

I find the overall decline in consumption brought about by the current recession to be a greater cause of serious injury than increased imports. I also find that the shift in consumer demand is an important cause of the present injury, but it is not in and of itself a greater cause than the relative import increase. Increased imports made it difficult for U.S. firms to conduct the transition to smaller vehicles, thus impairing their competitiveness and inhibiting a faster shift to meet changing demand. But by far the greatest explanation of the damage suffered in the past 18 months has been the recession itself. Without it, there would be no serious injury today.

Undoubtedly, there will be debate about the appropriateness of the majority's causation determination. This is an area of legal policy that is by its very nature controversial and subjective. There are those who might disagree with the policy of treating demand as a separate cause, but I believe this policy makes good sense. It is our task under the statute to find "substantial cause," and despite the fact that I realize imports are an "important" cause of the problem, they do not satisfy the strict criteria of Section 201. Perhaps the dilemma which this determination posed for me was best summed up by the court in the famous case of *Palsgraf* v. *Long Island Railway.*[30]

> The proximate cause, involved as it may be with many other causes, must be, at the least, something without which the event would not happen. The court must ask itself whether there was a natural and continuous sequence between cause and effect. Was the one a substantial factor in producing the other? Was there a direct connection between them, without too many intervening causes? Is the effect of cause on result not too attenuated? Is the cause likely, in the usual judgment of mankind, to produce the result? Or, by the exercise of prudent foresight, could the result be foreseen? Is the result too remote from the cause, and here we consider remoteness in time and space? * * * *We draw an uncertain line, but draw it we must as best we can.*

In addition to concluding that increased imports are not a substantial cause of the serious injury which presently exists, I also believe they could not be a substantial cause of any threat thereof. U.S. small car production is steadily increasing. The three major manufacturers have begun introducing their new generation of front wheel drive, fuel efficient vehicles. We received extensive testimony that such products were fully competitive and would revolutionize the automobile industry.[31] As such products come on stream the import share of the small car market should decline, particularly if demand picks up. Of course, if we remain in a deep recession with high interest rates it is probable that the present critical state of the industry will continue for some time. However, the adjustment already made by domestic

[29] Prehearing Report to the Commission and Parties, issued September 10, 1980, at A–66.

[30] 248 N.Y. 339, 162 N.E. 99 (1928) (Andrews, J., dissenting) (emphasis supplied).

[31] The prehearing brief of the UAW quotes a report that the domestic industry will increase its production of the smaller, more fuel-efficient cars from 1,750,000 vehicles in 1980 to 7,210,000 vehicles in 1983. Prehearing Brief of United Auto Workers at 70.

firms to changing consumer demand should act to reduce the import share. Thus, imports should not become a greater causal factor in the next year or two. It is also worth noting that monthly import sales have actually declined since August, 1980.[32] This seems to suggest that import volume has peaked, and that there would only be a noticeably higher import market share if demand for automobiles continued to decline. Such a decline in demand would only dramatize the causal link to recessionary factors which I have already cited as the major problem.

Views of Vice Chairman Michael J. Calhoun

In this investigation under section 201 of the Trade Act of 1974, we are called upon to determine

whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.[33]

After reviewing the record and considering the statute and the legislative history, I have determined that the requirements of section 201 have not been met and, thus, cannot recommend relief for the industry. I reach this conclusion because I do not find that imports are a substantial cause of serious injury as substantial cause is defined in section 201(b)(4). The reasons for this determination are discussed below.

Imported Article

The June 12, 1980 petition filed in this investigation by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") requested "relief from import competition from passenger cars, light trucks, vans and general utility vehicles from Japan, West Germany, and countries other than Canada." [34] Subsequently, the Commission initiated this investigation

to determine whether automobile trucks, except automobile truck tractors and truck trailers imported together; on-the-highway, passenger automobiles; and bodies (including cabs) and chassis for automobile trucks except truck tractors [35] are being imported in such a way as to be cognizable under section 201.

Subsequently, on August 4, the Ford Motor Company, Inc., "Ford", filed a petition which stated,

[t]he imported articles which have caused serious injury and are threatening more serious injury, to the U.S. automotive industry are passenger cars, including station wagons, * * * and light trucks, vans, and general utility vehicles * * *.[36]

The Commission's Notice of Receipt of the Ford petition [37] did not change the scope of the investigation instituted pursuant to the UAW petition. Thus, to determine the framework for an analysis of whether the criteria under section 201 have been met, it is necessary first to determine the relevant article or articles being imported.

No legislative history guides us in defining the article being imported. Giving the word its plain meaning, using Webster's Third New International Dictionary, an article is "a thing of a particular class or kind as distinct from a thing of another class or kind." Since the definition of the imported article focuses the investigation and since relief under section 201 is a derogation from our international commitments, it would seem apparent that the Congress intended the scope of the investigation to be narrowed to permit an assessment of the impact of as specifically described a "thing" as practicable.[38] Article, then should be defined as narrowly and precisely as possible, more so than simply a TSUS category if necessary so as to allow the greatest precision in assessing impact.

For the reasons discussed in this section, I conclude that the items subject to this investigation form three broad classes or kinds, and, thus, can be divided into three articles: (1) on-the-highway passenger automobiles; (2) light automobile trucks 10,000 pounds gross vehicle weight ("gvw") or less (except automobile truck tractors and truck trailers imported together), bodies (including cabs), and chassis for such automobile trucks; (3) medium and heavy trucks of over 1000 pounds gvw (except automobile truck tractors and truck trailers imported together), bodies (including cabs), and chassis for such automobile trucks.

On-the-highway passenger automobiles are described in TSUS item 692.10 with a special item 692.11 for these articles when imported from Canada under the Automotive Products Trade Act of 1965 ("APTA") (19 U.S.C. 2001). The column 1 rate of duty is being reduced from 3 percent ad valorem to 2.5 percent ad valorem in 5 annual stages beginning January 1, 1980.[39] The Canadian vehicles are imported free of duty. A very important characteristic of these on-the-highway passenger automobiles being imported into the United States is that, conservatively, 80 percent tend to be smaller, more fuel-efficient automobiles largely from Japan while the remaining 20 percent tend to be larger, less fuel-efficient automobiles largely from United States subsidiaries in Canada.[40]

Automobile trucks are described in TSUS item 692.02, with a special item 692.03 for vehicles imported from Canada under the APTA. The column 1 rate of duty on TSUS item 692.02, when valued at $1,000 or more, is 8.5 percent ad valorem. However, as a result of a trade dispute between the United States and the European Economic Community, these trucks are temporarily subject to duties at a rate of 25 percent ad valorem.[41] The Canadian vehicles are imported free of duty.

Although the scope of this investigation included medium and large trucks (except automobile truck tractors and truck trailers imported together) which are heavy duty commercial vehicles, the petitioners were particularly concerned with finished or unfinished automobile trucks with a gross vehicle weight of 10,000 pounds or less, popularly termed "light trucks." Light trucks include pickups, vans, general utility vehicles and certain wagons. In contrast to on-the-highway passenger automobiles, which are designed for the transportation of passengers, these light trucks traditionally have been designed primarily for the transportation of cargo and a driver.

Because of the concern with unfinished trucks, our investigation also encompassed bodies (including cabs) and chassis for trucks. A cab/chassis is a pickup cab on a chassis to which a

[32] Data compiled by USITC staff from public sources.

[33] Section 201(b)(1), 19 U.S.C. 2251(b)(1).

[34] Petition for Relief under Section 201 of the Trade Act of 1974 from Import Competition from Imported Passenger Cars, Light Trucks, Vans, and Utility Vehicles (hereinafter "UAW Petition"), p. 2.

[35] 45 FR 45731, July 7, 1980. The **Federal Register** notice delineates the broad category of imported articles which are subject to an investigation, but the notice does not define the domestic industry. The determination of which companies are producers of articles like or directly competitive with the imported article is made by the Commission at a much later stage in the investigation.

[36] Petition for Relief from Increased Imports of Passenger Cars, Light Trucks, Vans, and Utility Vehicles under Section 201 of the Trade Act of 1974 (Ford Petition) p. 10.

[37] 45 FR 55873, August 21, 1980.

[38] When Congress uses the term "articles" it sometimes intends it to have a broad meaning, including almost every separate substance or material, and at other times to have a narrower or more restricted meaning. Its significance in each case must be determined from the context. Marshall Co., Inc., *et al.* vs. U.S., 320 F. Supp. 1003, 65 Cust. Ct. 629, C.D. 4148 (1970).

[39] Pres. Proc. 4707, 44 FR 72348, December 11, 1979. Thus the rate is currently 2.9 percent ad valorem.

[40] For a discussion of these categorizations see the treatment of Industry, *infra*.

[41] Pres. Proc. 3564, 28 FR 13247, December 6, 1963, shown at item 945.69 of the TSUS.

number of different types of cargo or passenger containers may be attached. The cab/chassis are imported under TSUS item 692.20, with a special item 692.21 for these items imported under the APTA. The column 1 rate of duty on these items is 4 percent ad valorem. However, to implement a decision of the United States Court of Customs and Patent Appeals,[42] the United States Customs Service reclassified imported lightweight cab/chassis under item 692.02, making them dutiable at the temporary rate of 25 percent ad valorem.[43] The Canadian items are imported free of duty under item 692.03 of the TSUS.

Being Imported into the United States

Under the statute, the article whose impact is being assessed must be "imported into the United States." In this context, Ford has made a novel argument concerning articles entering the country under the APTA. It is Ford's position that these items are not being imported into the United States because there is a single, unified North American common market for the manufacture and distribution of new cars and trucks. The level of shipments of automobiles from Canada is, to some extent, coordinated by the domestic parent companies who are the purchasers of most of the Canadian items. The average Ford vehicle entering the United States from Canada has an aggregate United States content, as a percentage of dealer wholesale price, in excess of 75 percent. Further, Ford argues that the special status of these items is recognized under APTA and the relevant waiver obtained by the United States under Article XXV of the General Agreement on Tariffs and Trade (the "General Agreement").[44] In short, Ford contends that these captive imports, as distinct from others, ought not to be considered as imports for purposes of this investigation.[45]

I find no basis for supporting this argument. Because of the importance of the automotive trade between the United States and Canada, I shall address Ford's position in some detail. I should note, however, that even if Canadian imports were not included as imports, my determination would be no different.

General Motors Corporation ("GM"), Ford, Chrysler Corporation ("Chrysler"), and the American Motors Corporation ("AMC") have Canadian subsidiaries which operate assembly plants in Canada. The vehicles produced in those plants before 1980 were mostly those large vehicles which have difficultly competing with other imports.

Clearly there is a significant cross-border trade between the United States and Canada, with domestic producers responsible for that trade and its impact. Each U.S. manufacturer has a significant role in the operations of its Canadian subsidiary and, consequently, may direct those operations in a manner which is not harmful to the parent. Nevertheless, those very operations might have an adverse impact on another U.S. manufacturer or on the workers formerly involved in production operations transferred from the U.S. parent to the Canadian subsidiary. Because of the significance in volume and value of these captive imports, any investigation which excluded them from the definition of imports would be severely distorted.

Furthermore, there is no support for Ford's contention that there is a legal basis for determining that these articles are not being imported into the United States.[46]

Ford cites the Agreement Concerning Automotive Products Between the Government of the United States of America and the Government of Canada [47] (the "Autopact") as legal support for excluding the captive imports from Canada from our definition of imports. Basic to Ford's argument is the notion that the Autopact is more than a bilateral agreement concerning tariffs and that it creates a common market for trade in certain automotive vehicles and parts.

The fact that the Autopact has been iplemented as a *tariff agreement* although it is a logical extension of the integration of the U.S. and Canadian automotive industries. Moreoever, it expressly permits the application of section 201 to duty-free automotive imports from Canada by providing that each country may enforce its rights [48] under Article XIX of the General Agreement, the international escape clause upon which section 201 is based.

The Autopact is a brief bilateral agreement of unlimited duration. The preamble begins with a statement that describes the two governments as "determined to strengthen the economic relations between their two countries" and

> Recognizing that an expansion of trade can best be achieved through the reduction or elimination of tariff and all other barriers to trade operating to impede or distort the full and efficient development of *each country's* trade and industrial potential; * * * (emphasis added).

The substantive provisions of the Autopact are contained in its Articles I–V and its annexes. Article I is most germane. It stops short, however, of mentioning a common market.

The Report of the Committee on Finance on the Automotive Products Trade Act of 1965 is supportive of this interpretation: "The agreement permits either government to take action consistent with its obligations under Part II of the General Agreement on Tariffs and Trade (GATT) Art. II. Part of the GATT includes provisions permitting contracting parties to take antidumping measures and escape clause actions. In this connection it should be made clear that nothing in this agreement nor in this enabling legislation acts to dull the operation of our remedial statutes." Sen. Rep. 782, 89th Cong., 1st Sess., 7 (1965), USCAN 3670, 3676.

> The Governments of the United States and Canada, pursuant to the above principles [in the Preamble], shall seek the early achievement of the following objectives:
>
> (a) the creation of a *broader* market for automotive products within which the full benefits of specialization and large-scale production can be achieved;
>
> (b) The liberalization of United States and Canadian automotive trade in respect of *tariff* barriers and other *factors* tending to impede it, with a view to enabling the *industries of both countries* to participate on a fair and equitable basis in the expanding *total* market of the two countries: * * * (emphasis added)

Although Article I speaks of broad objectives, Article II limits the immediate impact of the Autopact to the granting of duty-free treatment to the imports specified in the annexes.

The United States implemented the Autopact in the Automotive Products

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[42] *Daisy-Heddon, Div. Victor Comptometer Corp. v. U.S.*, 600 F. 2d 799 (CCPA 1979).

[43] T.D. 80–137, 45 FR 35057, May 23, 1980.

[44] Ford Petition, pp. 16–21.

[45] Ford received no support for its position. Even Ford did not make a similar argument concerning captive imports from other countries.

[46] Contrast section 201(b)(3)(A), which seems to assume that capitive imports will be included in the domestic industry.

[47] 606 U.N.T.S. 31, 17 U.S.T. 1372, T.I.A.S No. 6093 (1965).

[48] Under Article III of the Autopact "The commitments made by the two Governments in this Agreement shall not preclude action by either Government consistent with its obligation under Part II of the General Agreement on Tariffs and Trade." Part II of the General Agreement contains the provisions which relate to nontariff barriers to international trade, including Article XIX. Concerning Article III of the Autopact, the GATT Working Party which examined the Autopact was told that the parties:

> "had wished to reseve their right to take certain action *vis-a-vis* each other in accordance with the articles of the GATT referred to and that the formulation in Article III had appeared the simplest way of doing this. This article was not intended to affect the rights and obligations of third countries under the General Agreement. (BISD, Thirteenth Supplement, 112, 115.)"

Trade Act of 1965 (19 U.S.C. 2001). The implementing provisions refer to proclamations and modifications of *tariff* treatment:

> The President is authorized to proclaim the modification of the Tariff Schedules of the United States provided for in Title IV of this Act.[49]

The only general reference to the broader objectives of Article I of the Autopact is contained in section 205 [50] of the legislation concerning special reports by the President to the Congress. The President was required to advise the Congress of the progress made toward the achievement of the objectives of Article I of the Autopact and recommend those further steps, including legislation, necessary for the achievement of the purposes of the Autopact and the implementing legislation.

Pursuant to the authority granted by Congress, the President has issued two proclamations concerning tariff treatment,[51] which is shown in Subpart B, Part 6, Schedule 6 of the TSUS and headnote 2 thereof.

The legislative history [52] of the Automotive Products Trade Act of 1965 provides no more helpful explanation of the Autopact and Congressional intent. It is noteworthy, though, that strong minority views were submitted by Senators Ribicoff, Hartke and Gore.[53] Their primary concern was that—

> This legislation is special interest legislation of the most restrictive sort, the opposite of free trade, detrimental to our balance-of-payment situation and harmful to American industry and jobs.[54]

The waiver [55] granted by the contracting parties to the United States for its discriminatory implementation of the Autopact was clearly a waiver of the obligations concerning customs treatment imposed upon the United States under Article I:1 of the General Agreement. The contracting parties seemed to consider the Autopact to be limited to tariff treatment. No mention was made of Article XXIV (relating to customs unions and free-trade areas). The preamble to the waiver and the waiver itself repeatedly refer to "duty-free treatment" and "customs duties." Further reading leads to the conclusion that the waiver was granted to further the international rationalization of production, provided the rights of other Contracting Parties are protected.[56]

As further support for its position, Ford cited the Commission's determination in Bolts, Nuts, and Large Screws of Iron or Steel, Investigation No. TA–201–37, USITC Pub. No. 924 (1978). Certain of the imported articles in that investigation were imported from Canada under the Autopact. In that investigation, in which only three Commissioners participated, Commissioners Moore and Bedell found in the affirmative (threat and serious injury, respectively). In the Determination of the Commission it was stated:

> The Commission makes no determination with respect to imports of the subject articles from Canada admitted free of duty as original equipment for motor vehicles under item 646.79 of the TSUS.[57]

Commissioner Bedell, in separate views explained,

> [t]here is insufficient information at this time, in my opinion, for me to make a determination with respect to these Canadian articles.[58]

Moreover, Commissioner Alberger, voting in the negative, made his determination

> with respect to all the imported articles under investigation, including these Canadian articles.[59]

Thsu, it is not correct to state that the Commission excluded the Canadian items from its consideration because of the Autopact and the implementing legislation.

In sum, this treatment of Ford's argument leads to the simple conclusion that those articles entering the United States from Canada, the Autopact and APTA notwithstanding, are, under the statute, being imported into the United States.

Increased Quantities

The statute further requires the Commission to determine whether an article is being imported into the United States "in such increased quantities" as to be a substantial cause of serious injury or the threat thereof to the domestic industry. The increase in quantity may be either actual or relative to domestic production. It is my view that imports of automobiles and light trucks satisfy this requirement and imports of heavy trucks do not.

It is undisputed that the quantity of imports of automobiles and light trucks has increased since 1975 both in actual numbers and relative to domestic production. The contrary is true with regard to medium and heavy trucks. When the data are reviewed, two facts are striking: The increase in imports from Japan and the extent of captive imports by United States producers.

Regarding automobiles, total imports for consumption of passenger automobiles increased in actual numbers from 2,047,702 in 1975 to a peak of 2,928,055 in 1978, before dropping to 2,797,063 in 1979. During the first 6 months of 1980, 1,631,767 automobiles were imported, an increase of about 200,000 cars or about 13 percent over the same period in 1979. Of the 4 percent decrease in 1979 compared with 1978, Canada's decrease was the largest (19 percent) even surpassing that of the Federal Republic of Germany (12 percent).[60] In contrast, imports from Japan increased 4 percent from 1978 to 1979, but increased 31 percent in the 6 month period January–June 1980 compared with the same period in 1979, probably because of the large inventories held in 1979 had been depleted.

As a percentage of total imports for consumption of passenger automobiles, Japan's share has steadily increased from 33.6 percent in 1975 to 52.2 percent in 1978, 56.9 percent in 1979 and 61.9 percent in the first 6 months of 1980.

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[49] 19 U.S.C. 2011(a).

[50] Id. at 2015.

[51] Proc. No. 3682, 30 F.R. 13683, October 21, 1965 and Proc. No. 3743, 31 F.R. 12003, September 8, 1966.

[52] 1965 U.S.C.C.A.N. 3670.

[53] Id. at p. 3705.

[54] Ibid.

[55] BISD, Fourteenth Supplement, 37.

[56] "Having been notified that the governments of the United States of America and Canada concluded, * * * an agreement *providing for duty-free treatment* for trade in automotive products between their two countries; * * * Considering that the automotive *industries* of the United States and Canada are characterized by an exceptionally high degree of integration, and Considering that by reason of the close *similarity of market conditions in the two countries* and the close relationship which exists and could be further developed *in their production facilities* of automotive products, there are special factors which offer exceptional opportunitites further both to *rationalize the production* of automotive products in the two countries and *integrate production facilities* and *to increase the efficiency* of United States/Canadian production; Considering, moreover, that the Government of the United States accepts that the facilities granted in paragraph 1 below [relating to the discriminatory duty-free treatment] should not be used in a way to prejudice the interests of other contracting parties and that it is not its intention to cause imports into the *United States market* of automotive products *imported from Canada* to replace imports of like products from other sources; * * *," (emphasis added) Substantively, the waiver contains the waiver itself (Article I) and several consultation/dispute resolution provisions designed to protect the trade interests of third party Contracting Parties, particularly if problems of trade diversion develop. An annex lists, in terms of TSUS item numbers, the automotive products which may receive the duty-free treatment.

[57] TA–201–37, p. 4.

[58] Id. p. 9.

[59] Id. p. 4.

[60] Certain Motor Vehicles and Certain Chassis and Bodies Therefor, Report to the President on Investigation No. TA-201-44, Dec. 21, 1980 (the "Report"), p. A-23. (The figures in the table are slightly distorted by the inclusion of Taiwan and Hong Kong.) The decline in imports from the Federal Republic of Germany can be accounted for, at least in part, by the opening of the Volkswagen of America, Inc., plant at New Stanton, Pa.

In 1979, of the 3,101,990 automobiles exported from Japan, 1,546,740 or 50 percent were exported to the United States.[61] In contrast 630,216 or 20 percent were exported to the nine member states of the European Economic Community and 342,690 or only 11 percent were exported to all of nearby Asia. During the same period, Japanese domestic consumption was about 8.1 million automobiles or about 100 percent of that country's automobile exports. In contrast to the marked increase in imports from Japan, there was a slight decrease in the volume of imports entering this country from the Federal Republic of Germany and the United Kingdom. There was a slight increase in the amount entering from Italy, Sweden and France.[62]

U.S. producers' imports for consumption of passenger automobiles increased from 830,000 in 1975 to 1,045,000 in 1977 and decreased to 779,000 in 1979. Thus, captive imports accounted for a declining but constantly significant share of total imports: 41 percent in 1975, 39 percent in 1976, 38 percent in 1977, 35 percent in 1978, 28 percent in 1979, and 26 percent in the first six months of 1980.

Imports of passenger automobiles as a percentage of domestic production increased steadily from 30.9 percent in 1975 to 33 percent in 1979. A sharp contrast is evident in comparing these ratios for the first 6 months of 1979 with the same period in 1980: 29.7 percent for 1979 versus an all-time high of 47.5 percent for 1980. The ratio of imports from Japan to domestic production ranged from 10 percent in 1975 to 19 percent in 1979 and 29 percent for the first 6 months of 1980.

A similar increase in imports occurred with regard to imports of light trucks and cab/chassis. Total imports for consumption of light trucks and cab/chassis increased in actual numbers from 374,620 in 1975 to 803,690 in 1979, or by 47 percent. For the first 6 months of 1980, there was a decrease of over 15,000 or 4 percent from the first half of 1979. This decrease of over 15,000 or 4 percent from the first half of 1979. This decrease was accounted for by the 42 percent decline in imports from Canada. However, 84 percent of that decline was taken up by imports from Japan, which increased by 40 percent.

As a percentage of total imports of light trucks and cab/chassis for consumption, the share of imports from Japan ranged from 54 percent in 1975 to 51 percent in 1976, 47 percent in 1977, 50 percent in 1978 and 55 percent in 1979. The ratio of 46 percent in the first 6 months of 1979 contrasts with a high of 67 percent in the same period of 1980.

United States producers' captive imports of light trucks and cab/chassis are significant. All of the imports from Canada during the period 1975 through the first 6 months of 1980 were captive imports. There was a slight overall decrease in the percentage of the imports from Japan that were captive: 50 percent in 1975, 43 percent in 1976, 40 percent in 1977 and 1978, and 48 percent in 1979 and the first 6 months of 1980. In sum, of the total imports of these articles, a significant percentage was caused each year by domestic producers, from 67.5 percent in 1975 to a high of 74.8 percent in the first 6 months of 1979. That ratio decreased to 63.7 percent in the first half of 1980.[63]

Imports of light trucks and cab/chassis as a percentage of domestic production increased steadily from 18.5 percent in 1975 to 26 percent in 1978 and 29 percent in 1979. The ratio jumped to 62.5 percent in the first 6 months of 1980 in contrast to 25.9 percent for the same period in 1979

Total imports for consumption of medium and heavy trucks and cab/chassis declined erratically from 1975 to 1979. The decline continued into the first 6 months of 1980.[64] Imports of this article as a percentage of domestic production also declined, as did the ratio of these imports to domestic consumption.[65]

Three criteria must be fulfilled before the Commission may make an affirmative determination under section 201. There must be an increase in imports, serious injury or the threat thereof, and a substantial casual link between the imports and the injury. A failure to make a positive showing concerning any single criterion defeats a petition. At this point, I am able to find that medium and heavy trucks are not being imported into the United States in the increased quantities contemplated by the statute. Consequently, my analysis of their impact ends here. Automobiles and light trucks are being imported in quantities sufficient to satisfy the increased imports requirement.

Domestic Industry

The definition of the domestic industry is the first step in the analysis of serious injury or the threat thereof. The group of domestic producers of the article like or directly competitive with the imported article comprises the domestic industry. In its analysis of injury, the Commission takes into account the financial and economic impact of the imported article under investigation on these producers. Thus, the proper identification of the domestic industry is a critical finding since, in any investigation, by varying the compostion of the domestic industry we could likely reach varying results with regard to the question of injury.

At the outset orf each investigation, the Commission considers all of the producers of an article which is possibly like or directly competitive with the imported article. Following the statutory guidelines, and considering economic and marketing data, we then determine the relevant domestic industry or industries.[66] Finally, the Commission may exclude from the scope of the domestic industry certain parts of producers when the inclusion of their full activities would tend to distort the analysis of injury.[67] I have concluded that there are two industries at issue here: Those producers and facilities producing automobiles and those producers and facilities producing light tructs and cab/chassis.

Section 201(b)(1) requires that we consider the question of serious injury or threat thereof to the domestic industry producing an article "like or directly competitive with the imported article." There is no statutory definition of the term "domestic industry," but there is legislative guidance concerning the term "likely or directly competitive with the imported article."

The phrase "like or directly competitive" dervices from language in Article XIX of the General Agreement,[68] the so-called "escape clause." It has been used in U.S. escape clause legislation since 1951.[69] In light of the legislative history and judicial guidance, the appropriate task in cases arising under section 201 is to draw a distinction between the "like" product

[61] *Motor Vehicle Statistics of Japan, 1980*, Japan Automobile Manufacturers Association.

[62] Report, p. A–23.

[63] Report, p. A–28.

[64] Id. pp. A–103 and A–105.

[65] Id. p. 105.

[66] With respect to the problem of whether the language "like or directly competitive" implies the existence and characteristics of one industry as opposed to two distinct industries, the legislative history of section 201 and the court's ruling in *United Shoe Workers* v. *Bedell* 506 F.2d 174 (D.C. Cir. 1974) provide useful guidance. In observing that "like" and "directly" competitive are concepts which are neither synonymous with nor explanatory of each other, both the House and the Senate strongly imply that these terms *could*, indeed, refer to separate groups of producers. See also the majority views in *Mushrooms*, Investigation No. TA–201.43, USITC Pub. No. 1089 (1980) at pp. 6–14.

[67] Sec. 201(b)(3)(A) and (B), 19 U.S.C. 2251(b)(3)(A) and (B).

[68] See General Agreement on Tariffs and Trade, 61 Stat. (5), (6), 55 U.N.T.S. 194 (1948), Vol. IV, BISD.

[69] Trade Agreements Extension Act of 1951, sec. 7, 65 Stat. 72 (1951).

and the "directly competitive" product.[70] Then, as we discussed *Mushrooms*,[71] *if the producers of the article like and the producers of the article directly competitive with the imports can be clearly treated as separate and distinct industries, we must look to whichever industry presents the most compelling cas for relief. The inudstry, in all cases, must be a rationally defined distinct entity in accordance with current business and marketing practices.*

Where the producers of the "like" product may easily constitute an apparent industry for the purposes of section 201, such a classification must be capable of analysis under the pertinent statutory criteria. In this connection, there may be instances in which it is impossible or inappropriate to segregate an industry. For example, when the same group of firms uses the same production facilities to produce both "like" and "directly competitive" articles or, otherwise, when it is impossible to break out statistics on production, consumption, sales, profits, or employment on the basis of the "like" product, then we might be compelled to aggregate.

With regard to the differences between products that are "like" and products that are "directly competitive," the legislative history of section 201, judicial precedent, and the majority view in *Mushrooms* offer guidance. The House and Senate Reports relating to the Trade Act of 1974 address this question directly with virtually identical language:

> [T]he words "like" and "directly competitive," as used previously and in this bill, are not to be regarded as synonymous or explanatory of each other, but rather to distinguish between "like" articles and articles which, although not "like", are nevertheless "directly competitive." In such context, "like" articles are those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which made, appearance, quality, texture, etc.), and "directly competitive" articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor.[72]

It is plain, therefore, that the intent of the drafting committees was that "like" has to do with the physical identity of the articles themselves, while "directly competitive" relates more to the notice of commerical interchangeability.

Judicial guidance on the distinction between the two terms can be found in the leading case of *United Shoe Workers of America, AFL–CIO* v. *Bedell*,[73] in which the court gave its view of the phrase, relying almost entirely on legislative history and case law regarding escape clause legislation. The court noted that,

> [A]n imported product that is "like" a domestic product will ordinarily be directly competitive with that product. Unless Congress, by using "directly competitive" alternatively, intended to embrace articles not within the scope of "like," the "directly competitive" language is superfluous. From daily experiences, however, we know that many products can be directly competitive without having identical or nearly identical physical characteristics. Normally, the term "directly competitive" invites, in the first instance, a comparison of the commercial uses of the products and not their characteristics; the word "like," in common parlance, does the reverse.[74]

The court added that "one must approach the question whether an imported article is 'like' a domestic article with the knowledge that 'like' is the more restrictive of the two terms."[75]

The UAW contends that there is a single domestic industry because,

> [a]ll U.S. produced passenger cars, light trucks, vans, and general utility vehicles (and wagons) are like or directly competitive with all imported passengers cars, imported light trucks, imported vans, and imported general utility vehicles (and wagons) respectively within the meaning of Section 201(b)(1) of the Trade Act of 1974. For example, compacts, subcompacts, intermediates and standard passenger cars compete against each other, with price (and price differential) often being an important factor in the final choice * * *.
>
> Moreover, the UAW submits that each separately identified category (passenger cars; light trucks; vans; general utility vehicles) is like or directly competitive with every other identified category.[76]

Further, the UAW cites section 601(5) of the Trade Act of 1974[77] as support for the assertion that cab/chassis and their cargo boxes or flatbeds are directly competitive with U.S. manufactured automotive products (e.g., U.S. manufactured light pickup trucks).[78]

Ford also contends that there is a single domestic industry.[79] According to Ford,

> [e]ach of these articles is adapted to the same basic use of providing transportation over both long and short distances, and they are all essentially interchangeable for that purpose * * *.
>
> Similarly, although a station wagon, a van, and a light pickup truck have different characteristis, a person who wanted a vehicle for both basic transportation and light hauling would be likely to consider all three. During the period 1976–1979, many trucks were sold to families as a substitute for the traditional second car.[80]

Additionally, Ford argues that automobiles and light trucks are generally produced by the same companies, in many of the same facilities, with the same workforce, utilizing many of the same components. They are marketed through the same distribution channels and displayed on many of the same dealer floors. They are often produced in the same assembly plants and use many common components. They also have hourly workers who, to a large extent, are members of the same union, the UAW.[81]

Generally, the importers argued that there are several domestic industries.[82] Many also argued that some or all imports are not like or directly competitive with any U.S. produced article.[83]

In view of all of this, and in view of my reading of the statute and the legislative history, I am convinced, first that Congress did not intend for this agency to undertake analysis and decisionmaking in a vacumm, ignoring the plan behavior in the marketplace. Application of the statutory criteria must be made against circumstances that exist in fact rather than on the basis of neat, conceptual constructs. Otherwise, our work here becomes useless and cloistered.

Furthermore, my understanding of the operation of section 201 is that, in general, the more broadly an industry is defined the greater is the likelihood of

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[70] See my opinion in *Mushrooms*, *supra*.

[71] *Mushrooms*, *supra*, at pp. 6–14.

[72] Trade Reform Act of 1974: Report of the Committee on Finance, S. Rept. No. 93–1298 (93rd Cong., 2d Sess. 1974), ("Sen. Rept."), pp. 121–122.

[73] 506 F. 2d 174 (D.C. Cir. 1974) concerning a petition for adjustment assistance under the Trade Expansion Act of 1962 (76 Stat. 883).

[74] 506 F. 2d 174, 185–186.

[75] Id. at p. 186.

[76] UAW Petition, pp. 34–35.

[77] 19 U.S.C. 2481 (5).

[78] UAW Petition, pp. 36–37.

[79] Ford Petition, pp. 11–14.

[80] ID. pp. 12–13.

[81] Id. at pp. 13–14.

[82] See, e.g., Prehearing Brief of Toyota Motor Sales, U.S.A., Inc. (5 industries: small passenger cars, large passenger cars, light trucks, general utility vehicles and vans), pp. 8–18; Brief of the American International Automobile Dealers Association (domestic industry producing small cars is the only relevant industry), pp. 21–37.

[83] See, e.g., Statement on Behalf of Alfa Romeo, Inc. and Alfa Romeo S.p.A. (Alfa Romero's are a specialty product different in terms of inherent and intrinsic characteristics from any U.S. product and compete with only one U.S. automobile, the Chevrolet Corvette), pp 18–19; Statement on Behalf of Mercedes-Benz of North America, Inc. (because of its high quality, Mercedes Benz are not like any U.S., produced automobile and because of its substantially higher price, they are not directly competitive), pp. 5–8; Prehearing Brief of Fiat Motors of North America, Inc. (each imported automobile is distinguishable from any other imported or domestic automobile by size, weight, appearance, parts, component materials, engine size, appointments, and engineering details), pp. 6–10.

diluting the indicia of injury. I do not think it can be seriously challenged that Congress intended section 201 to be a relaxation of the criteria for an industry to win relief.[84] Thus, if our analysis of industry is to be consistent with the intent of Congress, in each case we must attempt to define industry as narrowly as is reasonable to provide a petitioner with the best basis for a showing of serious injury or threat. Recognizing that there might be some cases where this practice might result is a reduction of the likelihood of a finding of injury, we must apply a uniform standard that is designed over the long term to further this legislative intent. Consequently, the task before us in section 201 cases is to gleen from the record what, in reality, is taking place in the market so that in applying the statutory criteria we can make the most realistic and precise finding as to what domestic articles are truly like or are truly directly competitive with the import article.

In this case, there can be little doubt that all automobiles, in a rather broad sense, are substantially identical for the reasons posited by petitioners. However, based on the record in this case, it is very difficult for me to accept that, as a matter of law, a Toyota Corolla, for example, is substantially identical in such particular intrinsic characteristics as appearance or quality to a Cadillac Seville, for example. Neither the marketing strategy of the domestic industry nor the discernable behavior of the consumer in the marketplace can be used to support such a proposition. As well, while each of these automobiles may well be substitutable for the other in nearly all the uses to which automobiles as a class are put, I am hard pressed to find any convincing data that this kind of substitution takes place, in fact.

Based on the evidence before us, what appears to be happening in the marketplace, with increasing frequency, is that the consumer is differentiating among automobiles based upon subjective and highly individualized compromises between size and fuel economy. Thus, to the consumer, the greater distance there is between particular models of automobiles based on this assessment of size versus fuel economy the less like they are and the less competitive they are.

Despite the high level of subjectivity involved in this decisionmaking, it is observable that a consensus is emerging and that the consumer is increasingly preferring automobiles that are smaller and more fuel-efficient than previous models. Were this not the case, each of the domestic producers of automobiles would not be engaged in the substantial retooling they are undertaking. Nor would they be involved in the significant changes in product line mix that they are pursuing.[85] Consequently, in terms of the statute, what is developing with respect to automobiles is the addition of new intrinsic characteristics which are available for determining whether one type of automobile is like another or is competitive with another.

Based upon this assessment, it only follows that the definition of industry in this case should be made using these additional characteristics as well. And, to be sure, the Department of Transportation, the Environmental Protection Agency, industry related to publications, and the industry itself use various categorizations based, in large part, on this phenomenon.[86] The problem for me, however, is that this plainly observable trend in the marketplace is not yet complete and has not yet stabilized. Therefore, any attempt to synthesize it or, otherwise, to develop analytical tools based on its lack sufficient objective basis for me to rely on in making an industry finding. Moreover, the kinds of data we use to measure serious injury are not available on the basis of an industry finding that would differentiate small fuel-efficient cars from those that tend to be larger less fuel-efficient.[87]

While I think the assessment of smaller, more fuel-efficient imported automobiles ought to be made against a domestic industry producing the same, for the reasons stated, I find that the domestic article like or directly competitive with the imported automobiles is the domestic automobile. Thus, the relevant industry, taking into account section 201(b)(3)(B), is those producers and facilities engaged in the production of automobiles.[88]

With regard to imported light trucks,[89] I am not able to find that light trucks are, as a matter of law, substantially identical in intrinsic characteristics or interchangeable for commercial purposes with domestic automobiles. In addition to the reasons discussed above, petitioners' arguments in this connection simply do not, in my mind, outweigh those of the respondents. In terms of substantial identity, while trucks and automobiles share the features stated by petitioners as a practical matter they simply are not identical. Truck designs make plain that they are structured less for passenger transport and more for bulk haulage. This is not to say that both objectives are not intended or that passenger transport is not accommodated. But the plain fact is that from appearance, trucks are primarily structured for haulage. They have a flatbed where automobiles allocate comparable space between haulage and passenger seating. Trucks allocate space so as to limit passenger space, whereas automobiles allocate space so as the maximize passenger space.

In terms of commercial interchangeability, evidence was presented that there is the practice in the marketplace for automobile purchasers to purchase light trucks instead, but the evidence, at best, establishes a limited practice largely localized in certain geographic regions. There is no basis on the record to find that this substitution is substantial. In short, with regard either to like or directly competitive with, petitioners have failed to provide us with sufficiently compelling arguments in theory or in fact that overcome evidence of the record to the contrary and to overcome long-standing perceptions in the marketplace that trucks are simply not the same as automobiles.

I, therefore, find that the domestic article which is like or directly competitive with imports of light trucks is the domestically produced light truck. As a result, the relevant industry, taking into account section 201(b)(3)(B), is those producers and facilities engaged in the production of light trucks.

Having found these two industries, there are two matters related to the discussion of industry that have been raised and that deserve to be addressed.

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[84] See, Senate Report, *supra*, at p. 120. See also, Trade Reform Act of 1973: Report of the Committee on Ways and Means, House Report No. 93-571 (93rd Cong., 1st Session, 1973), ("House Report") p. 44.

[85] As a further matter in this connection, it cannot be ignored that, at the least, 80 percent of the imports and all of those imports that are increasing are of the smaller, more fuel-efficient type. As well, it is this rough category of domestic automobiles that is and has been experiencing an increase in sales.

[86] See Report, at pp. A-7.

[87] It is worth noting, under section 201(b)(3)(B), particularly in light of the legislative reports (See House Report, *supra*, at pp. 45-46. See also Senate Report, *supra*, at p. 122) that I am not entirely sure what practical effect such an industry definition would have had on a serious injury analysis or substantial cause analysis. In the House Report, if the domestic article in question were produced by an independent operating division, those divisions not producing that article would be excluded from the industry finding. However, if the domestic article were produced in a "multiproduct plant" or a "subdivision" where there is production of several different product lines, the industry would include the operating unit as a whole.

[88] My reasons for not including domestic trucks as like or directly competitive with imported automobiles are the same as those discussed in the following treatment of domestic articles like or directly competitive with imported trucks.

[89] I found, *infra*, that imported heavy trucks were not properly before us because there are no increasing imports of these articles.

First, the UAW has argued that under section 601(5), imported cab/chasis are directly competitive with light trucks. Upon import, with only minimal application of labor and other resources, these items are converted to products that are, as a practical matter, substantially identical to the domestically produced article. Therefore, these items must be regarded under section 601(5) as directly competitive. I have accounted for this fact in defining the imported article, whose impact on the domestic industry is the suject of this investigation, as light trucks and cab/chassis.

The second matter is the question of whether dealers and independent suppliers are part of an industry under review here.[90] Under section 201 we are to consider serious injury with regard to the "domestic industry producing an article like or directly competitive with the imported article." Insofar as dealers are concerned, then, since they produce no article at all, I can see no basis for including them in either domestic industry. Regarding parts suppliers, my reading of *United Shoe Workers* v. *Bedell* is that the court found that a producer of component parts had no standing to petition for relief becaue their components were not "like or directly competitive with" the finished article. If under that case there can be no standing to petition, then I cannot understand how such individuals can be part of the industry for purposes of assessing serious injury. This is especially so since the standard for standing is much lower than that for industry. Moreover, our discussion in *Mushrooms* of the relationship between producers of fresh mushrooms and producers of canned mushrooms further supports my finding that independent suppliers to the automotive industry are not part of the industry for purposes of section 201.

Substantial Cause [91]

The Trade Act of 1974 defines substantial cause and lists factors we are to consider in determining whether increased imports are a substantial cause of serious injury or the threat of serious injury. Under section 201(b)(4), substantial cause is "a cause which is important and not less than any other cause." Under section 201(b)(2)(C), we are to take into account *all* economic factors we consider relevant including, in the case of substantial cause,

> an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

The reports of the Committee on Finance and the Committee on Ways and Means, are largely repetitive of the language in the statute.[92] But two policies are clear from the treatment of this issue by both Committees. First, the change made by the Trade Act of 1974 in the causality standard from one requiring imports to be a "major cause" to one requiring them to be a "substantial cause" was intended to make the nexus between imports and serious injury easier to establish. It was felt that the former standard "proved in many cases to be unreasonably difficult."[93] The second policy, which is more relevant here, is that the Commission has broad discretion in analyzing causality because cases differ. The economic factors pertinent in one investigation may not be relevant in others. The Commission has amassed a substantive expertise upon which to draw in making the difficult judgments about what factors are relevant and what factors are more important than others in each investigation. Thus the authority, indeed the requirement, for us to reflect upon *all factors we consider relevant* is plain in both reports. The House report succinctly states this intent and underlying policy.

> A new section has been added concerning the factors to be taken into account by the Tariff Commission [now the United States International Trade Commission] in determining serious injury, threat of serious injury, and substantial cause. These factors are not intended to be exclusive. It is important to note that *the Commission is directed to take into account all economic factors it considers relevant.* The committee did not intend that an industry automatically would satisfy the eligibility criteria for import relief by showing that all, or some of the enumerated factors, were present at the time of its petition to the Tariff Commission. *That is a judgment to be made by the Tariff Commission on the basis of all factors it considers relevant.*[94] (Emphasis added.)

Taking into account all economic factors I consider relevant and for the reasons discussed below, I have concluded that under the law, imports are not a substantial cause of serious injury. That imports are an important cause of serious injury is a fact that cannot be seriously challenged, indeed, it has not been. Thus I have not separately addressed it. The heart of the analysis of the requisite nexus between imports and serious injury is, however, whether there are factors which are more important than imports. I have found two factors which seem to be more important causes of the industry's problems than are increased imports.

First, the demand for the type of automobile desired by a significant portion of the buying public is shifting from a product line roughly described as larger, less fuel-efficient automobiles to smaller, more fuel-efficient automobiles.[95] As has been discussed, I have great difficulty as a practical matter in defining with precision the line of demarcation between these two product lines. While such a distinction is difficult to formulate and thus precludes my basing an industry definition on it, the fact of the difference is plain, the consequence is palpable, and the phenomonon of this shift, as distinct from a shift to imports, is demonstrable.

Second there has been an overall decline in demand for automobiles that is largely associated with the general decline in the economy. When the impact of this decline in demand is weighed against the increase in imports, the conclusion, to me, is clear that its impact on the industry of the decline in demand has been noticeably greater than has been the impact of imports.

A. *Shift in demand.*—With regard to the shift in consumer preference from one type of automobile to another, petitioners argued that if such a shift exists it is nothing more than a shift from the purchase of domestic cars to the purchase of imported cars with a resulting increase in imported automobiles. The reason for the increase in imports, they argued, is unimportant to our determination under section 201. Moreover, their view continued, section

[90] See Posthearing Brief Submitted on Behalf of Robert P. Mallon and Other Interested Domestic Automotive Dealers (auto dealers are "interested parties"), pp. 3–5; Posthearing Brief Submitted by the Automotive Materials Industry Council of the United States (the role of supplier companies is relevant in evaluating the ability of the automobile industry to adjust to new conditions of competition), pp. 5–6; and Posthearing Brief Submitted by Coalition of Automotive Component and Supply workers (the suppliers are "a proper participant"), pp. 2–6.

[91] Ordinarily my treatment of serious injury and the threat of serious injury would come before a discussion of substantial cause. In this regard, I associate myself completely with the views of Chairman Alberger on the matters of serious injury and the threat thereof to both industries. I also associate myself with the views of the Chairman regarding substantial cause as it relates to the light truck industry.

[92] See Senate Report, *supra*, at pp. 120–121. See also House Report, *supra*, at pp. 46–47.

[93] See Senate Report, *supra*, at p. 120. See also House Report, *supra*, at p. 44. It should be noted, however, that this relaxation was not intended to be open-ended. The Senate Report, at p. 121, observes that "[i]t is not intended that the escape clause criteria go from one extreme of excessive rigidity to complete laxity." Both Committees emphasize that the standard has two criteria that must be met in all cases: (a) imports must be an important cause of serious injury *and* (b) imports must be no less important than any other single cause. See House Report, *supra*, at p. 46 and the Senate Report, *supra*, at p. 120.

[94] House Report, *supra*, at p. 47.

[95] See discussion under Industry, *infra*.

201 is specifically designed to provide a remedy in precisely those circumstances in which domestic sales are displaced by sales of imports. While I do not refute this view of the policy underlying section 201 I must take exception, both in concept and in fact, with the view that in this case the shift in consumer preference merely explains why imports might have increased and is not cognizable as an independent source of injury to the domestic industry.

In concept, the Commission has specifically relied upon a shift in consumer preference from one type of product to another as a phenomenon distinct from a shift to imports *qua* imports. The most attenuated support for this proposition is *Unalloyed, Unwrought Zinc,* Investigation No. TA–201–31, USITC Pub. No. 894 (1978). In that investigation the Commission found that imports were not a substantial cause of serious injury because a decline in demand was a more important cause of the injury to the industry. An important element in the decline in demand for the domestic article was, despite increasing imports, the replacement of the domestic article by a substitute article. Another investigation in which the Commission recognized and relied upon the concept of demand shift as distinct from a shift to imports in assessing causality was *Low-Carbon Ferrochromium,* Investigation No. TA–201–20, USITC Pub. No. 825 (1977). In that case, the Commission found that a technological innovation had caused a fundamental change in the production process employed by the industry, and, hence, a drastic shift from the use of low-carbon ferrochromium to the use of high-carbon ferrochromium. As a result the majority concluded that, despite increasing imports, the injury the low-carbon ferrochromium industry might have been suffering was due more to the decline in demand for its product.

For me the decisive precedent for the integrity of demand shift as a concept distinct from a shift to imports in a circumstance of increasing and competitive imports is *Wrapper Tobacco,* Investigation No. TA–201–3, USITC, Pub. No. 746 (1975). *Wrapper Tobacco* has a particular precedential appeal because the behavior of imports in the marketplace was especially strong. First, imports had more than tripled their market penetration over a four-year period while domestic production and total consumption were in decline.[96] Second, the prices of the bulk of the imported articles tended to be below the price of the domestic articles, but certain high-grade imports were priced considerably higher than the domestic product.[97] Third, while some of the imports were considered to be of higher quality than the domestic article, most of the imports were used to produce product lines that competed with those using the domestic product.

In the face of this extremely competitive position of imports, the Commission in *Wrapper Tobacco* made a unanimous negative determination. Four Commissioners relied upon the change in consumer tastes from larger cigars to smaller cigars and other tobacco products as the primary reason for the decline in demand they viewed as a cause of injury more important than increasing imports.[98] Thus, the majority of the Commission had no difficulty in concept or in fact in differentiating between a shift from the domestic article and a shift to imports.

But there are, however, important areas in which these cases are deficient as support for the proposition that a shift in demand is a distinct factor to be weighed by itself against increasing imports in deciding substantial cause. First, in no case was there a shift in demand to another item produced within what was found to be the relevant industry. The shifts that occurred were all to items outside the industry that was found, thus, implying that there was a decline of an entire industry because of changes in the marketplace rather than because of increasing imports. Second, in each of these cases the specific Commission finding was that the decline in demand/consumption was the cause greater than imports for the injury sustained. Thus while the cases do differentiate between shift in demand and shift to imports, neither of them has specifically relied upon a shift in demand as a separate factor to be weighed against imports.

To the extent the use of a shift in demand as a separate factor in assessing substantial cause is a matter of first impression, I do not think it too great a departure from well-established Commission practice. Nor do I see it as doing violence to the underlying policy of section 201. Without belaboring the point, the essence of section 201 is to provide relief in those cases in which increasing imports are an important contributing cause of serious injury and there are no contributing causes more important. It follows then that if causes can be found that, in our judgment, have contributed more so than imports to the industry's problems, section 201 cannot be used to remedy the situation. A shift in demand is a phenomenon distinguishable in concept from a shift to imports, as this Commission has treated it thus far. If there is no conceptual basis for denying the shift theory status as a separate factor ultimately explaining the decline of an industry, surely it is cognizable as a factor directly explaining a structural change taking place within an industry.

Moreover, where in both concept and in fact a shift in demand is distinguishable from a shift to imports, not to make it a factor in the consideration of causality transforms section 201 from an import relief provision to an industrial relief provision. Under such a view, whenever an industry is in decline because of internal structural changes or exogenous occurrences in the society independent of imports, an industry need only show that imports are increasing concommitant with its difficulty and it could receive relief. While one could make very good arguments supporting the need for an industrial policy which would provide assistance to worthy industries suffering generalized difficulty unassociated with imports, section 201 cannot be so construed. It is plainly and simply an import relief provision and, therefore, our fundamental task on the face of it and from the legislative history is to determine that *imports* are an important cause of the injury and to determine that no other cause is more important than imports. Thus, any other factors that may have contributed to injury must be measured against the contribution made by imports.

Having established the validity of the concept of a product line shift as a factor to be assessed in this case, establishing the fact of the shift and assessing what weight it ought to be given is not difficult. Several preliminary factors make this exercise particularly valuable in finding the substantial cause in this case.

First, there is a significant difference between the level of profit earned by the industry on sales of larger automobiles compared with profits on smaller ones.[99] Indeed, a fundamental strategy for the industry, for years, has been that the great majority of profits on sales of automobiles would be earned on larger automobiles. Smaller cars would be marketed to fill out the product line and, ultimately, to win over larger car purchasers. Thus, the product mix of larger and smaller automobiles has been

[96] See *Wrapper Tobacco, supra,* at pp. A–37 and A–46.

[97] See *Wrapper Tobacco, supra,* at pp. A–28–29.

[98] See views of Chairman Will E. Leonard and Vice Chairman Daniel Minchew at pp. 8–9. See also views of Commissioners Catherine Bedell and Joseph O. Parker at pp. 12–14.

[99] See Report, at pp. A–43.

a particularly important factor in the industry's profitability.

Second, as a practical matter a change in the product mix requries not only a considerable lead time, but also an exceptionally high capital investment.

Together, these two special features of the industry render it especially vulnerable to a relatively quick and sustained shift in consumer preference. Further, they explain why such a shift is an important factor in assessing the substantial cause.

That such a shift has taken place in consumer taste is readily demonstrable.[100] Between 1975 and 1979, large domestic car sales grew at an annual rate of 2.4 percent while sales of imports grew at an annual rate of 6.4 percent. Eclipsing both of these were sales of small domestic cares which grew 9.6 percent during this period. Comparing the first half of 1980 to the first half of 1979, in 1980 sales of large domestic cars declined 48.5 percent. The failure of small domestic cars to keep pace with their earlier rate of sales growth and with the growth rate of imports for the first half of 1980 might be viewed as proof that consumption has, in fact, shifted to imports *qua* imports. But precisely the opposite is the case.

The significant growth in demand for domestic small cars caught up with production during the first half of 1980, exceeding the ability of the domestic producer to supply the market. During the first six months of 1980, several producers were at or above their full capacity for small cars. Others were either experiencing serious recall problems on their major small car models or were suffering from major adverse publicity on their products' quality and safety.[101] Both of these factors had a considerable impact on sales.

The change in consumer purchasing patterns from buying large cars to buying smaller cars is even more striking when measuring car sales as a percent of apparent consumption. In 1975 small domestic car sales were 26.6 percent of total apparent consumption, large domestic cars were 47.6 percent, and imports were 26 percent.[102] In the same year, small domestic cars were 36.1 percent of domestic producers' sales while larger cars accounted for the balance.[103] By 1979, small domestic crs had grown to 31.5 percent of apparent consumption, large domestic cars fell to 41.4 percent and imports were 27 percent. Small domestic cars were 44.1 percent of domestic producer sales. For the first half of 1980, despite the problems of domestic supply shortfalls and quality problems with small domestic cars, this category grew to 36.3 percent of apparent consumption, large domestic cars abruptly fell to 29.2 percent and imports, taking up the slack caused by domestic supply problems, grew to 34 percent of appar ent consumption. Small domestic cars, for this period, represented 55.4 percent of domestic producer sales.

These figures convince me that a fundamental demand side structural change is occurring in the automobile industry. They further convince me that this change is not one characterized simply as a shift to imports, even though for the first half of 1980 imports have benefited from the change more than have domestic small cars. This aberration for early 1980 is a result of domestic supply and quality problems. By all measures, consumption has been shifting to smalller cars and domestic smaller cars have benefited from the shift more than have imports. This fact can be futher demonstrated by marhsalling the data in a slightly different way.

Charts 1 and 2 below show the actual shift in demand that took place between 1978, the first year it became apparent and 1979. Chart 1 shows the shift in demand from large cars to small cars for that period. Chart 2 reflects, rather plainly, that domestic small car producers were the major benefactors by far of the shift to small car purchases.[104]

Chart 1.—*Apparent consumption*

[In thousands of units]

Year	Large domestic cars	Small cars	Total
1978	5,259.6	5,925.4	11,185.0
1979	4,202.7	6,112.6	10,315.3
Change in consumption	(1,056.9)	187.2	(869.7)

Chart 1.—*Apparent consumption*—Continued

[In thousands of units]

Year	Large domestic cars	Small cars	Total
Expected change in consumption due to change in economic activity	(409.0)	(460.7)	(869.7)
Actual change due to shift in demand	(647.9)	647.9	0.0

Source: Compiled from data presented in Tables 17 and 19 of the Report. Figures in parentheses represent decline.

In Chart 1, total apparent consumption between 1978 and 1979 declined by 869,700 units, or 7.8 percent. All of this decline was due to the 1,056,900 unit fall in consumption of large domestic cars. However, if consumers had no preference as to which type of automobile they purchased and if there would have been a 7.8 percent decline in sales anyway, each type of car would have suffered a 7.8 percent decline. This would have resulted in an expected domestic large car decline of 411,400 units.

In contrast, consumption of small cars between 1978 and 1979 increased 187,200 units, but there would have been an expected decline of 460,300 units. Thus, consumption of small cars was 647,900 units more than would have been indicated by the annual change in demand and is also the amount by which demand for large cars declined in excess of that accounted for by the overall decline in demand. This amount represents the quantum of the shift in demand from large cars to small cars between 1978 and 1979.

Chart 2.—*Small car apparent consumption*

[In thousands of units]

Year	Domestic cars	Imports	Total
1978	2,997.3	2,928.1	5,925.4
1979	3,315.5	2,797.1	6,112.6
Change in consumption	318.2	(131.0)	187.2
Expected change in consumption due to change in economic activity	94.7	92.5	187.2
Actual change due to shift in demand	223.5	(223.5)	.....

Source: Compiled from data presented in Tables 17 and 19 of the Report. Figures in parentheses represent decline.

Chart 2 shows that between 1978 and 1979, small car consumption increased 187,200 units, or 3.2 percent. Of that total increase in apparent consumption of small cars, domestic small cars increased 318,200 units while imports actually declined 131,000 units, which accounts for the net increase in small car consumption of 187,200 units. Applying the same logic as used in chart 1, if the consumer was indifferent as to whether domestic small cars or imports were purchased, each would have

[100] As I discussed *infra*, the differentiation between automobiles that are larger and less fuel-efficient and those that are smaller and more fuel-efficient is too imprecise a construction on which to base an industry analysis. Nevertheless, for purposes of differentiating among product lines, the various categorizations currently in use provide reasonable distinctions for the purpose of demonstrating that changes are occurring in the type of automobile being purchased. For my discussion I shall use the categories employed by Ward's Automotive Reports, Automotive News, the industry itself, and in the staff report to the Commission. (See Report, pp. A-7 and A-31.) In may analysis I have combined the large and intermediate category into one category called large cars. I have combined the compact and sub-compact categories into a small car category. I have used the word imports to include all imports and assued that approximately 20 percent or so of them that are, in fact, not small cars are small cars.

[101] See Report, at pp. A-63-66.

[102] See Report, at p. A-72.

[103] See Report, at p. A-34.

[104] In charts 1 and 2 small cars are a combination of domestic small cars plus all imports.

shared equally in the effects of the net growth in the consumption of small cars.

Thus, domestic small cars would have increased 94,700 units and imports 91,600 units. In stark contrast, however, consumption of small domestic cars increased 223,500 units more than can be accounted for by the overall growth in small car consumption. These 223,500 additional units of domestic small cars represent the quantum of shift to domestic small cars over imported small cars. Taken together, these charts show that in the period 1978 to 1979 there was, in fact, a shift from consumption of large cars to small cars and that shift was distinct from a shift to imports. Indeed, chart 2 shows that the shift benefited domestic small cars more so than imports.[105]

Charts 3 and 4 repeat the analyses in charts 1 and 2, respectively, for the first half of 1980 compared with the first half of 1979.

Chart 3.—*Apparent consumption*

[In thousands of units]

Year	Large cars	Small cars	Total
Jan.-June 1979	2,683.1	3,124.6	5,807.7
Jan.-June 1980	1,382.6	3,349.1	4,731.7
Change in consumption	(1,300.5)	224.5	(1,076.0)
Expected change in consumption due to change in economic activity	(497.1)	(578.9)	(1,076.0)
Actual change due to shift in demand	(803.4)	803.4	

Source: Compiled from data presented in Tables 7 and 19 of the Report. Figures in parentheses represent decline.

Chart 3 well reflects that the trend to small cars which began in earnest in 1978 is continuing into 1980. In the second half of 1980 the total 18.5 percent decline in apparent consumption was more than accounted for by the fall in consumption of large cars. The decline in demand for large cars was 1.3 million units against an expected decline of 497,100 units. Small cars, on the other hand, increased 224,500 units in contrast to the expected decline of 578,900 units. Therefore, the actual growth in consumption of small cars was 803,300 units, which is the amount by which larger cars declined in excess of the decline accounted for by the overall decline in demand. This is the quantum of the continuation of the shift in demand from large cars to small cars in the first half of 1980 compared with the same period in 1979.

[105] It should be recalled that imports as used here include all imports, even those 20 percent or so that might not be included in the small car category used here. Therefore, the extent of the benefit to domestic small cars is understated to some extent.

Chart 4.—*Domestic small car apparent consumption*

[In thousands of units]

Year	Domestic small cars	Imports	Total
Jan.-June 1979	1,686.7	1,437.9	3,124.6
Jan.-June 1980	1,717.3	1,631.8	3,349.1
Change in consumption	30.6	193.9	224.5
Expected change in consumption due to change in economic activity	121.8	102.7	224.5
Actual change due to shift in demand	(91.2)	91.2	

Source: Compiled from data presented in Tables 17 and 19 of the Report. Figures in parentheses represent decline.

Chart 4 shows how the continued shift in demand was apportioned between small domestic cars and imports. As shown in Chart 3, the consumption of small cars increased 224,500 units or by 7.2 percent. However, unlike the shift from 1978 to 1979, the domestic small car producers were not the major recipients of the shift. Consumption of domestic small cars increased by 30,600 units. But, as a reflection of the growth in total consumption, domestic small cars should have increased 121,800 units. This represents a shortfall of 91,200 units. Imports, on the other hand, had an actual increase of 193,600 units which was 91,200 units more than expected. This amount represents the extent to which imports have won more of the shift in demand for the first half of 1980 compared with the same period in 1979.

In the first half of 1980 there appears to be a shift in demand to imports rather than a shift in demand to small domestic cars. My analysis of data submitted to us in confidence leads me to conclude that during this period the failure of small domestic cars to continue the trend firmly established in 1979 is due in large part to two factors.

The first factor is the inability of some domestic producers to produce enough small cars for demand because of capacity constraints. Some domestic producers were operating at and, in some cases, above maximum capacity. The other factor is the inability of some domestic producers to sell their product due to adverse perceptions by the consumer about the product resulting from product recalls and safety problems associated with them.

Ford's low production and capacity utilization rate, to me, is due to the adverse publicity that Ford received due to the product recall and safety problem associated with the Pinto. However, for the 1980 model year Ford ceased production of the Pinto and introduced the new Lynx/Escort Series which will be subject to a maximum production limit of only 485,000 cars in the first year.

In my view, Chrysler compact production has also suffered from adverse publicity due to the unprecedented volume of product recalls of the Volarie and Aspen models. These models were discontinued in the 1980 model year and replaced by the K-car series which has a maximum production capacity of 550,000 cars this model year.

B. *Decline in Demand.*—With regard to decline in demand, there can be no serious question as to the Commission's authority to consider it a separate factor to be weighed against imports.[106] If there is any legal issue here, it is as to whether the constituent elements of the decline in demand are to be weighed separately against imports in assessing substantial cause or whether they are to be "cumulated" into one factor, decline in demand.

In this connection, I associate myself with the views of Chairman Alberger. In short, decline in demand, in this investigation is the result of the recessionary pressures on the economy over the past year to year-and-a-half. Even under the most imprecise usage, a recession, or economic downturn, is regarded as the result of the complex interaction of several elements: Unemployment, high interest rates, restrictive credit policies, and slowdown in the growth of GNP to name the major ones. To separate out any one of these elements as a factor for comparison against imports, even it if could be done with acceptable precision, is without meaning and provides no serious economic assessment to what is actually taking place in the market. Because I believe Congress expects an analysis from this agency based on matters as they are in reality, I find it appropriate here to view a decline in demand as a discrete factor for comparison with imports in assessing substantial cause.

During the latter part of 1979 and the first half of 1980, interest rates rose to a record 20 percent, industrial production fell 7.5 percent, the unemployment rate jumped 1.5 percentage points, real GNP declined a near record 9.1 percent, and crude oil prices nearly doubled.[107] Also,

[106] There are at least six cases in the six year history of section 201 in which the Commission has found a decline in demand to have been a greater cause of serious injury than had been imports: *Birch Plywood Door Skins*, Inv. No. TA-201-1, USITC Pub. No. 743 (1975); *Wrapper Tobacco*, Inv. No. TA-201-3, USITC Pub. No. 746 (1975); *Plant Hangers*, Inv. No. TA-201-15, USITC Pub. No. 797 (1976); *Low-Carbon Ferrochromium*, Inv. No. TA-201.20, USITC Pub. No. 825 (1977); *Unalloyed, Unwrought Zinc*, Inv. No. TA201-31, USITC Pub. No. 894 (1978); and *Certain Machine Needles*, Inv. No. TA-201-38, USITC Pub. No. 936 (1979).

[107] Federal Reserve Bulletin, July 1980, pp. 536-540.

in the first half of 1980, retail sales fell more than 9.5 percent in real terms.[108]

Consistent with this general decline in retail sales, sales of automobiles, in particular, also declined. In 1979 total consumption of automobiles fell 7.8 percent from 1978 and, for the first six months of 1980, overall demand was down 18.5 percent from the same period in 1979.[109] That this decline in demand for automobiles is associated with the downturn in the economy is further apparent from the fact that total consumption grew by 9.1 percent from 1975 until 1978 after the first decline became apparent. The point of this decline coincides with the period in which the economic downturn began.

Taking this analysis a step further demonstrates the greater significance of this decline in demand relative to imports. Charts 5 and 6 below analyze this decline for the period 1978 to 1979 and for the first half of 1980 compared with the same period in 1979.

Chart 5.—*Apparent Consumption*

[1,000 units]

Year	Domestic cars	Imports	Total
1978	8256.9	2928.1	11,185.0
1979	7518.2	2797.2	10,315.3
Change in consumption	(738.7)	(131.0)	(869.7)
Expected change in consumption due to change in economic activity	(642.0)	(227.7)	(869.7)
Decline in demand due to increasing imports	96.7		

Source: Compiled from data presented in tables 17 and 9 of the report. Figures in parentheses represent decline.

Chart 5 shows that apparent consumption declined 869,700 units, 7.8 percent, between 1978 and 1979. Of this amount, 738,700 units are accounted for by a fall in the consumption of domestic cars, a decline of 8.9 percent. The remaining 131,000 units is a decline in consumption of imports, a decline of 4.5 percent. If consumers did not differentiate between domestic and foreign cars in their purchasing, and the decline in demand remained at 7.8 percent, the expected change in consumption of domestic cars overall would have been 642,000 units rather than the 738,700 units which were lost. By the same theory, the decline of imports would have been 227,700 units rather than the 131,000 units which were lost. The shift from domestic cars to imports, then, was 96,700 units because the decline in domestic cars was 96,700 units more than expected and the decline of imports was 96,700 units less than expected. In comparison, however, the decline of 642,000 units for domestic cars associated with the overall decline in demand for automobiles is much greater than the 96,700 units lost that are attributable to a combination of increased imports.

Chart 6.—*Apparent Consumption*

[1,000 units]

Year	Domestic cars	Imports	Total
January–June 1979	4369.8	1437.9	5807.7
January–June 1980	3099.9	1631.9	4731.7
Change in consumption	(1269.9)	193.9	(1076.0)
Expected change due to decline in economic activity	(809.6)	(266.4)	(1076.0)
Change due to imports	(460.3)		

Source: Compiled from data presented in tables 17 and 19 of the report. Figures in parentheses represent decline.

Chart 6 undertakes the same analysis as that in Chart 5 except the period compared is the first half of 1980 with the first half of 1979. For the first half of 1980, the recession was still evident as is reflected in the further decline in consumption of automobiles. Apparent consumption in the first half of 1980 declined 1,076,000 units, or 18.5 percent, from the comparable period in 1979. The consumption of domestic cars declined 1,269,900 units, or 29.1 percent, but the expected decline was 809,600 units. Imports increased 193,900 units against an expected decline of 266,400 units. Of the 1,269,900 unit decline in domestic car consumption, 809,600 units, or 63.8 percent, occurred as a result of the decline in economic activity and 460,300 units, or 36.2 percent occurred as a result of a combination of increased imports and some of the noneconomic factors that are affecting some producers. I cannot imagine a clearer demonstration that the decline in demand was and is a more important cause of serious injury than increased imports.

C. *General.*—Both petitioners and respondents, in this case, relied heavily on quantitative analytical techniques in support of their arguments. In my review of the record, I spent some time examining these submissions. As a result, I feel that some brief comment is in order regarding the major submissions.

The "Shift Share" analysis submitted in this investigation by a group of importers [110] seeks to explain economic changes in a particular segment of an economy by looking at changes in the general level of economic activity. In simple terms, the shift share analysis looks at an industry as a closed system and assumes that any economic growth or shrinkage of an industry is related to or can be explained by the change(s) in the economy as a whole. Applying this to the domestic automotive industry, these importers contend that the decline in domestic car and light truck sales is a result of the overall decline in demand for passenger vehicles and light trucks from the downturn in economic activity, and the structural shift in the automotive market that increased the proportion of small fuel-efficient vehicles demanded in relation to total vehicles demanded. The importers argue that this structural shift was a direct result of gasoline price increases and consumer concern about fuel availability.

Their analysis segmented the total industry into large and small vehicles. It was conducted on the basis of unit sales of domestic passenger vehicles versus all passenger vehicles, small cars versus all passenger cars and domestic small cars versus all small cars. The analysis of sales of domestic passenger vehicles and all passenger vehicles measures the change in domestic demand due to the change in overall passenger demand. The analysis of sales of small cars and all passenger cars measures the structural shift in small car demand relative to total car demand. The analysis of domestic small car demand and total small car demand measures the changes in domestic sales as a result of imports.

My basic criticism of the shift share analysis is that it assumes that consumer preferences, spending habits, and similar factors are homogeneous and that the general level of economic activity affects each consumer's demand for cars in the same way. Furthermore, the shift share analysis is a residual approach in that once the basic change on the industry in question has been calculated, the residual decline in sales is assigned to increased imports. However, in spite of these shortcomings, I feel that this model along with the Wharton model, does help to explain the change that took place in the automotive industry from 1979 through the first half of 1980. Indeed, both petitioners, Ford [111] and AIA, used this basic methodology and theory in support of their respective arguments.

The Wharton Econometric Vehicle Demand Model is a stock adjustment model based on the theory that demand for automobiles is a function of the need

[108] Ibid.
[109] Ibid.
[110] Prehearing statement of John G. Reilly of ICF Inc. on behalf of the Automobile Importers of America, Inc.
[111] In its submission, Ford employed an analysis which heavily relied upon principles and assumptions which are very similar to the shift analysis discussed here.

for transportation or vehicle miles. To obtain these vehicle miles or satisfy the need for transportation, a stock or level of vehicles is required. This desired level of automobiles is a long-run adjustment concept and depends on demographic factors, age, vehicle miles traveled, income, and costs of buying and operating a vehicle.

First, the model determines a value for the number of cars to be sold, in aggregate and by category, for the 1979–80 period. It then looks at three scenarios and their effect on the domestic sale of automobiles. They are the effect of the gasoline crisis, economic activity, and imports. In each of these three cases, the Wharton model takes as a base case the solution values [112] and key inputs (gasoline prices, economic activity, imports) for car sales in the 1979–80 period and makes adjustments to determine what effects these three factors have on unit sales.

The Wharton model is the most comprehensive model submitted in this investigation. Its choice of demographic variables (personal income, car ownership costs, and new car prices) adds much to the model in helping to predict and explain the movement of domestic sales and the factors that affect those sales. Of the three models reviewed, the Wharton model, in my opinion, was the most reliable.

In Ford's analysis, the decline in domestic sales and production is a result of three factors: the downturn in economic activity, rising gasoline prices, and imports. They go on to state that the increase in imports is the greatest single cause of injury to the domestic industry. Injury to the domestic industry is defined as the difference between actual domestic sales and expected trend sales.

The trend line for expected industry sales was derived by using the least squares regression technique. In the model, Ford used the Federal Reserve Board Index of Industrial production as a proxy for economic activity, and gasoline prices as the variable to explain the sale of both domestically produced and imported cars.

My criticism of Ford's model concentrates just on the regression model. In the regression equation, Ford omits the use of variables that have been shown, in the Wharton and Chase Econometric models, to be important determinants of automobile demand. Factors such as the unemployment rate and credit availability are not reflected in Ford's results.

[112] Solution values are values for total new car sales and each of its components: large and small domestic cars and imports.

The analysis is based on projected 1980 sales volume rather than on an actual observed value. To test the explanatory and predictive ability of the model, Ford should have demonstrated how well the model works against actual results in 1978 and 1979. In one case, I found that the model predicted sales volume to be 13.8 million units when the actual volume was 11.3 million units, a 20 percent error.

Ford's use of the FRB Index of Industrial Production as a variable to explain the changes in new car sales raises further doubts about the validity of the results. Automobile production accounts for 4.5 percent of the industrial production that is measured by the Index, but other industries such as steel, glass, and rubber which provide a substantial amount of their output to the auto industry are also included in the Index. This gives rise to the question of bias in using the FRB Index which Ford has not addressed.

In conclusion, I feel that the Ford regression not only suffers from a flawed choice of variables for determining new car sales, but the regression itself, which Ford contends is statistically significant, is nothing more than a curve-fitting exercise with little or no economic meaning. It does little of significance in explaining or predicting new car sales or changes in new car demand in the 1979–80 period.

Thus, on the basis of the record developed in investigation TA–201–44, for the reasons outlined above, I find that increased imports are not a substantial cause of this serious injury.

Postscript

Having reached these conclusions, however, I am compelled to add that imports have, nevertheless, been a significant thorn in the industry's side. Indeed, the condition caused by these factors has been grossly exacerbated by the increase in imports. Moreover, my analysis of this case and my concern for the integrity of the international trading system require me to make one final observation about imports. At a time when so important an industry to the United States economy, as is the automobile industry, was experiencing clear and significant trouble, certain foreign automobile manufacturers appreciably expanded their sales in this market.

While, as a general proposition, I heartily embrace the notion of a competitive and so-called "free" international trading system, I also feel that participants in the international trading system, both public and private alike, owe to sovereign nations a measure of regard, a certain sensitivity so as to avoid achieving their success at too high a cost to the host society. I have found a disturbing absence of such regard and sensitivity on the part of particular foreign automobile manufacturers.

I do not think it hyperbole to suggest that the United States' market is the most pursued market in the world. As a result, we often fall victim to the excesses of this pursuit. It is a disappointment to me that in my reading section 201 it fails, in this case, to protect our automobile industry from just such an excess at the hands of these manufacturers.

Views of Commissioner Paula Stern

I. Introduction

The automotive industry import relief case comes before the United States International Trade Commission (the Commission) under section 201(b) of the Trade Act of 1974. This law establishes three conditions which must be fulfilled before the Commission can make an affirmative finding and recommend a remedy to the President. They are:

(1) There must be increased imports—either actual or relative to domestic production—of an article into the United States.

(2) The domestic industry producing an article like or directly competitive with the imported one must be seriously injured or threatened with serious injury.

(3) The increased imports must be a substantial cause of the serious injury, or the threat thereof, to the domestic industry making the article in question.

As befits the largest industry to ever appear before the Commission virtually every possible question of legal and economic analysis was at issue.

The following outlines the organization of my views on the issues of this case:

Section II. The Domestic Automotive Industries:
  Three industries. Components producers. Captive imports. Canadian products.
Section III. Imports in the U.S. Market:
  Heavy trucks. Light trucks. Passenger automobiles. Determination on heavy trucks.
Section IV. The U.S. Light Truck Industry:
  Economic indicators. The tariff change. Other special considerations. Determination on light trucks.
Section V. Serious Injury to the Passenger Auto Industry:
  Economic indicators. Serious injury finding.
Section VI. Many Causes of Injury: Imports Not a Substantial One:
  Standards and framework for substantial cause. Causes of injury.
Section VII. Serious Injury Will Continue: Imports Not a Substantial Cause:

Standards and framework for threat. The near term future and threat determination. The medium term future.

Conclusion

I have determined that the U.S. heavy truck industry does not satisfy the first criterion for an affirmative decision and that although the passenger automobile and light truck industries are seriously injured, increased imports have not been a substantial cause. Therefore my determinations are negative for all three domestic industries.

II. The Domestic Automotive Industries

Analyzing the scope of the industry or industries can have a major impact on the questions of injury and causation. My findings in this case, however, have *not* been critically dependent on the technicalities of defining the industries involved. In general, the judgment on scope depends on the nature of the imported products, the competitive conditions in the domestic market, and the character of U.S. production.

Section 201 requires an examination of "the domestic industry producing an article like or directly competitive with the imported article * * *." In our most recent ruling under section 201, some of the problems in applying this language were aired.[113] In the majority views, we fully described the appropriate methodology and discussed a major tension between legal and economic analysis which bears on all section 201 cases: industry definition is based on precise legal standards which do not necessarily coincide with the popular understanding of a particular industy, *e.g.*, the auto industry. One cannot rely exclusively on general legal prescriptions; the particular facts of each case cannot be ignored.

Three Industries

I have concluded that this investigation requires findings with respect to three separate and distinct industries—the firms and facilities devoted to the production of:

(1) all passenger automobiles;

(2) light trucks of under 10,000 pounds gross vehicle weight (GVW);

(3) heavy trucks.

Since our report covers bodies (including cabs and chassis) for automobile trucks, it is also important to point out that I consider domestic producers of these articles to fall within the same general industry definition (either light trucks or heavy trucks) as the final assembled product.

I have defined the passenger auto industry in its entirety because there is no justifiable basis on which to segment its scope at this time. Costs of converting production lines from one type of auto to another can be huge. Despite this fact, I have found one passenger auto industry because of the significant shifting and confusion in the market during the present period. Were it not for this shifting, it might have been reasonable to identify a number of constituent industries. As for light trucks, they are inherently distinct from passenger vehicles in their characteristics and principal uses. Finally, heavy trucks are produced separately and aimed for strictly commercial uses.

Components Producers

It is my view that producers of automobile and truck parts are part of the respective domestic automobile and truck industries. The "industry" in a section 201 investigation can be like a pyramid. In this case, at the very top of the pyramid are the domestic producers of the finished product, but also included in the pyramid are all the productive resources (both capital and labor) employed in the production of the article.[114] The primary purpose of section 201 is the protection of domestic resources engaged in the production of goods. This protection extends beyond the corporate structures (and resources employed therein) performing the final work on a product. Thus, for example, I believe that a person employed by an independent firm producing engine parts for new cars is as much a part of the domestic industry as a worker performing the same task in a Ford engine plant or, for that matter, a worker on a Ford final assembly line.

One should not confuse the issue of who is part of the domestic industry with the issue of who may petition for import relief. Clearly, as the U.S. Court of Appeals held in the case of *United Shoe Workers* v. *Bedell*[115], component parts producers would not be proper petitioners in this case because they would not be producers of a like or directly competitive article; automobile parts are not like or directly competitive with finished automobiles.

While the Commission does not have complete data regarding components parts producers, the data we do have show parts producers experiencing difficulties similar to those of the big automobile and truck manufacturers. As suppliers, their production and shipments are tied directly to the demand for parts by the big auto and truck makers. Supplier shipments, profits, and employment have all fallen along with assembled automobile and truck production. In analyzing the domestic industry, I have discussed aggregate data including only components production within firms producing assembled motor vehicles covered by the investigation.[116] Since the imported products are in general not components parts, any injury to domestic components parts producers occur via vehicle imports. Therefore, the findings regarding serious injury and causation based on the data the Commission has assembled apply to components parts producers as well. Absent a petition and investigation on increased imports of motor vehicles parts there is no possibility of relief for components producers separate from relief accorded the final industry.

Captive Imports

Section 201(b)(3) of the Trade Act, which is concerned with what constitutes "the domestic industry," is the only provision in section 201 to address expressly the question of Commission treatment of articles imported by domestic producers. It provides that:

> * * * in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—
>
> (A) may, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production * * *.

The reports of the House Ways and Means Committee and the Senate Finance Committee on the provisions of the bill which became the Trade Act offer no additional guidance.[117]

Section 201(b)(3), in effect, codified prior Commission practice on the subject of "domestic industry." In essence, it suggests that the Commission should, when appropriate, narrow the scope of the domestic industry against which the impact of increased imports is to be measured to those establishments

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[113] *Mushrooms*, Inv. No. TA-201-43, USITC Pub. No. 1089 (1980). *See* "Views of Chairman Bill Alberger, Vice Chairman Michael Calhoun and Commissioner Paula Stern" at 6-14.

[114] U.S. auto producers include General Motors Corp. (GM), Ford Motor Co. (Ford), Chrysler Corp. (Chrysler), American Motors Corp. (AMC), and Volkswagen of America, Inc. (VW of America).

[115] 506 F. 2d 174 (D.C. Cir. 1974).

[116] This was done for the following reasons: (1) the Commission lacks complete data on components producers; (2) if such data were available, aggregating much of it with data collected for final producers would be questionable; (3) most crucially, such data are not of critical value to an import relief finding in this case.

[117] See the report of the U.S. House of Representatives, Committee on Ways and Means, Trade Reform Act of 1973, H. Rept. No. 93-571, 93d Cong., 1st Sess. (1973) at 45 (Ways and Means Committee Report); and U.S. Senate Committee on Finance, Trade Reform Act of 1974, S. Rept. No. 93-1298, 93d Cong., 2d Sess. (1974) at 122 (Finance Committee Report).

or parts of an establishment which are actually producing the like or directly competitive article. I believe that Congress used the word "may" rather than "shall" in section 201(b)(A) to provide the Commission with some latitude in considering data relating to the question of injury. Section 201(b)(3) thus permits the Commission, for example, to exclude from aggregate industry profit data, profits in the industry deriving from its import business. Where such data are incapable of being segregated, profits from an import business or from the sale of other products may be included.

I have concluded that the only time at which the Commission should consider adjusting the import statistics would be when the imports are imports in technical terms only, *e.g.*, when the domestic products have been exported for certain minor finishing work and then reimported. Motor vehicles assembled in Canada largely from U.S.-made parts do not appear to fall into this category. Such vehicles are at least 40 percent Canadian in value.

Canadian Products

In their hearing testimony of briefs, the International Union, United Automobile Workers (UAW) and Ford Motor Co. (Ford) argued that imports from Canada by U.S. motor vehicle manufacturers should not be treated as imports in view of the Automotive Products Trade Act of 1965 (APTA), the U.S.-Canadian Automotive Agreement [118], and the the integrated U.S.-Canadian market. It is my view that the automobiles and trucks imported by U.S. producers from Canada and other countries are also "imports" for the purpose of this investigation. Nothing in section 201, the APTA, the Agreement, or the General Agreement on Tariffs and Trade (GATT) suggest otherwise.

The APTA—APTA section 301 clearly permits either party to invoke escape clause import relief.[119]

The GATT—The concept of "increased imports" is taken from Article XIX, the GATT's so-called "escape clause."[120] The principal clause of Article XIX provides that certain protection action can be taken—

(i)f, as a result of unforseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products * * *.[121]

Because the APTA authorized the President to remove all customs duties on specified automotive products from Canada alone, a waiver of most-favored-nation (MFN) obligations under GATT Article I was necessary. This waiver does not reach the question of exceptions from escape clause actions under Article XIX. If the United States were to conclude that Canadian or other captive imports were not imports and were to excluse them from a remedy on that basis, such action might be judged as discriminatory within the meaning of GATT. The GATT requires that any remedy apply to all imports from al MFN countries on a nondiscriminatory basis. The exclusion from "imports" of most of the imports from a given country, such as Canada, and the imposition of import restrictions on all other imports would appear to constitute an action discriminating in favor of one MFN country and against other MFN countries.

III. Imports in the U.S. Market

Heavy Trucks

Imports of trucks over 10,000 pounds GVW declined very irregularly from 38,000 units in 1975 to 14,600 in 1979. First-half year statistics for 1980 are more than ten percent below those of the similar period a year earlier. The ratio of imports to U.S. production likewise fell irregularly from 17 percent (1975) to 8 percent (1979), although it was up by four percentage points during the first half of 1980.

Light Trucks

U.S. imports of light trucks and cab/chassis more than doubled between 1975 and 1978, rising from nearly 375,000 units to nearly 860,000 units. In 1979 imports of light trucks declined to about 804,000 units and continued to decline in the first six months of 1980 by more than 3.5 percent from the corresponding period in 1979.

Japan and Canada have been the dominant suppliers of light truck and cab/chassis imports, accounting for more than 95 percent of the total in recent years. Imports from Japan rose rapidly between 1975 and 1979; its share of total imports ranged from a low of 47 percent in 1977 to a high of 55 percent in 1979. In the first six months of 1980, however, Japan's share of light trucks and cab/chassis rose to 67 percent. After increasing from 41 percent in 1975 to 49 percent in 1977, Canada's share of imports fell to 43 percent in 1979 and further declined to 31 percent in January–June 1980. Imports from West Germany, the only other source of imports of light trucks, steadily declined relative to total imports during 1975–1979.[122]

U.S. producers' captive imports consistently accounted for nearly 70 percent of imports of light trucks and cab/chassis during 1975–1979. All light trucks imported from Canada were captive imports of U.S. producers, and from 40 to 50 percent of light truck imports from Japan were captive as well.

Imports of light trucks also increased relative to production. Imports of light trucks and cab/chassis increased from 19 percent of U.S. production in 1975 to 29 percent in 1979 and then grew markedly to 62.5 percent in January–June 1980.

Passenger Automobiles

Imports of passenger automobiles grew steadily by 43 percent, from slightly more than two million units in 1975 to more than 2.9 million units in 1978. In 1979, car imports fell by about four percent to 2.8 million units, primarily as a result of sharp reduction in imports from Canada. In January–June 1980, auto imports increased thirteen percent from the corresponding period of 1979; imports from Canada, however, which had declined from 850,000 units in 1977 to 678,000 in 1979, continued to decline.

Japan, the leading source of U.S. imports in recent years, has seen its share of imports grow from 34 percent in 1975 to 57 percent in 1979 and to 62 percent in January–June 1980. Much of Japan's growth has been at the expense of other countries' shares of U.S. imports. Canadian import penetration declined steadily from 36 percent in 1975 to 24 percent in 1979 and West Germany's share declined irregularly from 17 percent to 11 percent in the same period.[123] The combined imports of

[118] Agreement Concerning Automotive Products Between the Government of the United States and the Government of Canada. 17 UST 1372 (1965) (the Agreement). It was implemented by the APTA.

[119] 19 U.S.C. 2021.

[120] *Done* October 30, 1947, 61 Stat. Pt. 5, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

[121] GATT Art. XIX, para. 1(a).

[122] Including as imports Volkswagen light trucks that are assembled in a free-trade zone in Pennsylvania results in nearly a doubling of the share of imports accounted for by West Germany in January–June 1980 in comparison to the like period of 1979. While they are only 30 percent, by value, of foreign origin, the U.S. Customs Service classifies them as imports from West Germany.

[123] VW of America's imports into U.S. customs territory from the free-trade zone at New Stanton, Pa., are not included in the Commission's data as imports since 70 percent of the value of the vehicle is added in the United States (However, the Customs Service treats such vehicles as imports from West Germany.) Inclusion of VW's New Stanton production in the Commission's import data gives West Germany an increasing share of U.S. imports from 1978 through January–June 1980, when West Germany accounted for 17 percent of the total.

passenger automobiles from countries other than Japan, West Germany, and Canada consistently amounted to less than ten percent of total imports in recent years.

U.S. producers' captive imports of automobiles accounted for a significant share of total imports of automobiles, although the share has steadily declined since 1975. As a share of total automobile imports the combined imports of GM, Ford, Chrysler and AMC declined from 41 percent in 1975 to 28 percent in 1979 and further declined to 27 percent in January–June 1980.

Determination on Heavy Trucks

Heavy truck imports cannot possibly be causing injury to the domestic industry within the meaning of the Act. No party to this investigation claimed import-related injury to the domestic heavy truck industry. Indeed, the section 201 requisite that imports be increasing has not been satisfied in a meaningful manner.[124] Therefore, I have made a negative determination with respect to imports of heavy trucks. By contrast, U.S. imports of light trucks and automobiles have been increasing in both absolute and relative terms.

IV. The U.S. Light Truck Industry

During the last two years the light truck industry has sustained serious injury but imports have not been a substantial cause of this injury. In any event, a recent tariff reclassification has mooted much of this discussion because it is so significant as to remove any possibility that light trucks might be imported into the United States in such increased quantities as to be or threaten to become a substantial cause of serious injury to the domestic light truck industry.

Economic Indicators[125]

Domestic production of light trucks increased from two million units in 1975 to 3.3 million units in 1978, but declined to 2.7 million units in 1979. The declining trend in light truck production continued in the first half to 1980, when production fell of 683,000 units, a decrease of 60 percent from the corresponding period in 1979. Domestic production of light trucks weighing over 6,000 pounds remained higher than production of trucks weighing less than 6,000 pounds for this period. However, as total domestic production of light trucks increased during 1975–1978, production of the larger light trucks gained a greater share of the total. During 1979 and the first half of 1980 production of such larger trucks fell much more rapidly than production of small light trucks.

Total domestic capacity to produce light trucks increased steadily from 2.7 million units in 1975 to 3.2 million units in 1979. From January–June 1979 to January–June 1980, however, domestic capacity to produce light trucks declined from 1.8 million units to 1.6 million units. Relative to total U.S. light truck capacity, the capacities for producing light trucks over and under 6,000 pounds did not change appreciably.

Domestic capacity utilization for light trucks increased from 74 percent in 1975 to over 100 percent in 1977 and 1978 and fell to 87 percent in 1979. In the first half of 1980 it dropped precipitously from 94 percent (January–June 1979) to 42 percent.

Inventories of domestic light trucks increased steadily from 372,000 units at the end of 1975 to 638,000 units at year-end 1979, but fell to 465,000 units as of June 30, 1980. As a percentage of annual shipments, inventories of U.S.-produced lighty trucks increased markedly in 1979 and again in 1980. In 1979 the ratio of inventories of light trucks to annual shipments increased to 25 percent from an average of about 18 percent for the previous four years. It increased again in the first half of 1980 to 35 percent.[126]

Making price comparisons for automotive vehicles is complicated by the myriad of differences in their physical and subjective attributes and thousands of different product configurations. However, careful examination of the adjusted Japanese export price index and the U.S. producer price index for light trucks suggests that the average price of imported trucks fell substantially relative to the average domestic price during 1979.

In the last two years, the rapid decline in sales in this multibillion dollar industry, which requires high production runs to cover large fixed costs, indicates that the light truck industry suffered from serious injury in 1979 and the first half of 1980.

The Tariff Change

Prior to August 21, 1980, most light trucks entered the United States unfinished as chassis under TSUS item 692.20 rather than as trucks under TSUS item 692.02. Such trucks lacked only their load beds and could be quickly assembled into completed light trucks. Effective August 21, 1980, the U.S. Customs Service corrected a classification error and reclassified them as trucks. Light trucks, which had been classified as truck chassis with an assessed duty of four percent, are now dutiable at 25 percent.

Other Special Considerations

One difference between the automobile and light truck markets is that almost 50 percent of the imports of light trucks from Japan (1979) are captive imports sold by domestic producers under their own brand name. (By comparison, only about ten percent of non-Canadian imports of automobiles are captive imports.) Until November 1979, there was no domestic production of small pickup trucks. However, U.S. production of small pickups now imported by GM, Ford, and Nissan is scheduled to commence within the next few years.

The import relief statute is not designed to protect U.S. industries from self-inflicted injury nor is it intended to interfere with efforts of the industry to adjust to import competition.[127] The strategy for development of U.S. production followed by Honda and Volkswagen[128] suggests that as GM and Ford switch to domestic production of small pickups, continued captive imports will be vital if they are to maintain a full selection and develop the market in an orderly fashion. Import relief could interfere with this process. Furthermore, since U.S. producers bring in half the imports of small pickups and enjoy a more extensive dealer network than do non-captive imports, U.S. producers can already control the transition to domestic production of small pickup trucks.

Determination on Light Trucks

The decline in overall demand, exacerbated by a more rapid fall in larger light truck sales, reflected phenomena similar to those we shall observe and discuss in Sections VI and VII. These considerations have led me to conclude that even if there had not been a tariff reclassification, imports would neither be a substantial cause of serious injury to the light truck industry, nor a threat of such.

[124] I shall, therefore, not give further consideration to the heavy truck industry in these views.

[125] A full discussion of the standards and framework for my determinations in the investigation is included in my examination of the passenger auto industry which follows.

[126] Data for employment and profits cannot be segregated from those for the automotive industry. These important aggregate indicators will be discussed in Section VI.

[127] S. Rept. No. 93–1298, 93d Cong., 2d Sess. (1974) at 122. The Senate Finance Committee Report states:

> The escape clause is not intended to protect industries which fail to help themselves become more competitive through reasonable research and investment efforts, steps to improve productivity and other measures that competitive industries must continually undertake.

[128] *See* briefs of Honda Motor Co., Ltd. and VW of America.

V. Serious Injury to the Passenger Automobile Industry

Section 201(b)(2)(A) of the Trade Act provides guidelines for determining whether a domestic industry is being seriously injured. The Commission must consider, among other economic factors, whether there is a significant idling of productive facilities in the industry, whether a significant number of firms operate at a reasonable level of profit, and whether there is significant unemployment or underemployment within the industry. Because the Act specifically avoids limiting the Commission to just these criteria, I have also considered all other relevant economic indicators on which the Commission has been able to compile data. As a consequence of the huge scale of the industry and the varying but extensive degree of integration of operations, it has not been possible to compile all data on a strictly comparable basis. I have chosen the best available sources and have endeavored to note any significant limitations.

Economic Indicators

In the aggregate, most of the indices of domestic automobile producers' performance show improvement from 1975 through 1978 and then rapid declines which, based on unofficial data, lasted through the third quarter of 1980. When the aggregate data are broken down by vehicle size, striking differences emerge. Economic performance of compacts and subcompacts improved after 1978, albeit at slower rates. However, this strengthened performance was more than offset by the sharp drop in all measures of economic health of the intermediate and full-size sectors.

U.S. Production—U.S. production of automobiles grew from 6.6 million vehicles in 1975 to 9.1 million in 1978 before falling off to 8.4 million in 1979. Figures for the first half of 1980 compared to the same period one year earlier show a further decline of 29 percent. After growing irregularly from 2.4 million units (1975) to 2.6 million (1977), production of small cars (subcompacts and compacts) jumped to 3.7 million (1979). Large (intermediate and full-size) car production peaked at 6.5 million in 1977 and fell sharply to 4.7 million in 1979. For the first half of 1980, these trends continued as small car production grew slightly and that of large cars fell a staggering 48 percent from the same period of 1979.

These dismal trends do not appear to be significantly biased by unusual circumstances such as strikes or unavailability of parts. Nor is there any indication of resource reallocation to foreign subsidiaries or production of other products.

Total Capacity—Total capacity [129] to produce cars fluctuated slightly from January 1975 to June 1980. A small increase of one percent from 1975 to 1977 was offset by a slightly larger decline from 1977 to 1979. The latter was attributable to time lost in plant conversions. However, a further small decline in the first half of 1980 reflects closings of large car plants by Ford and Chrysler. Domestic small car capacity grew 28 percent from 1975 to 1979 before levelling off in the first half of 1980. On a unit-for-unit basis, the growth of capacity to produce small cars has substituted for declines in capacity for large car production. [130]

Capacity Utilization—Utilization of total domestic capacity for production of autos increased from 62 percent in 1975 to 86 percent in 1978 before declining to 80 percent in 1979. From a January–June 1979 figure of 91 percent, it fell to 67 percent from January–June 1980. For small cars, however, utilization grew from 72 percent (1977) to 80 percent (1979) and was 84 percent for January–June 1980 compared to a slightly smaller figure one year earlier. Capacity utilization for large cars dropped from 91 percent (1977) to 79 percent (1979). First-half year figures dramatize the sudden collapse of large car production—down in one year from 79 percent (1979) to 53 percent (1980).

Inventories—Inventories as a percentage of annual shipments generally vary inversely with economic health. [131] After falling from 21 percent in 1975 to 17 percent in 1976, the ratio grew to 20 percent in 1979 and 23 percent for the first half of 1979. Opposing this trend, the ratio of small car inventories to shipments declined; after one year of stability, it steadily fell from 23 percent in 1976 to 17 percent in 1979.

Employment—Total employment grew from 793,000 workers in 1975 to more than one million in 1978, and then declined by three percent to 972,000 in 1979. The first half of 1980 saw a further decline by 22 percent from the same period of 1979 to about 804,000. [132]

Employment of production workers shows a similar trend. Relative to the end of 1978, there were 300,000 unemployed in June 1980. While 29 percent unemployment is large, previous downturns have been equally disastrous for workers. Similar sharp declines form previous peaks were recorded in 1969–1970 (27 percent) and 1973–1975 (25 percent).

The grim unemployment situation is exacerbated by underemployment shown in the average weekly hours per worker which dropped below 40 hours for the first time in five years in the first half of 1980. Average weekly overtime and average weekly hours per worker grew from 1975 to 1977 before declining through 1979. Weekly overtime still averages 2.05 hours per worker. This may reflect use of overtime in production areas with bottlenecks and restraint by the firms in immediate rehiring of laid-off workers when prospects for keeping them are not good.

Wages—Average hourly compensation of auto workers grew at an annual rate of more than nine percent from 1975 to January–June 1980, slightly faster than that for all manufacturing workers. The average gross earnings of $9.47 (compared to $7.07 for all manufacturing workers) reflect the rapid growth of wages in years prior to 1977; over the last two decades, the UAW successfully negotiated large wage increases augmented by cost-of-living allowances (COLA) provisions which have tended to gurantee the real income of auto workers. [133] Fringe benefits and significant supplemental funds for laid-off workers supported by the producers have further boosted average total compensation to auto workers to $16.55 per hour. [134]

Productivity—Because of varying labor input requirements, changing product mix of the producers, and wide differences in vertical integration among the firms in the industry, a single aggregate productivity measure may be

[129] Capacity figures are subject to a number of reservations. *See* accompanying Report at A–32.

[130] Most of this growth has been concentrated in the previously neglected (by relative standards) subcompact sector.

[131] In general, inventories are held by dealers, grow with brisk sales, and run down when sales shrink or credit costs rise.

[132] Corporate statistics are not broken out on the large number of employees of the auto manufacturers engaged in the production of auto parts, components, and trucks. The data given for this indicator are, therefore, industry aggregates for establishments producting assembled motor vehicles.

[133] Since 1977, the growth of auto wages has been slower than average growth of all manufacturing worker's wages.

[134] Average total compensation is the sum of average hourly compensation paid to auto-workers plus average non-salary fringe benefits such as employer social security contributions, etc., plus average supplement benefit contributions. Each of these is quite distinct.

Under the supplemental benefit program, manufacturers contribute at specified rates to the supplemental fund until the target level based on current employment is reached. When no benefits are paid out and the fund is full, the employers' contributions drop to zero. Significant and continued unemployment over the last two years has steadily tapped the funds and increased the employers' contributions—at a time when companies could least afford it.

misleading. Such problems are minimized when many indicators are used to depict the state of the industry. There was little change in output per worker per hour from 1975 to 1978, but a substantial drop in the first half of 1980. That decline is indicative of the large inefficiencies incurred in operating auto plants below optimum level.

Profits—The financial performance of U.S. producers show drastic changes in recent years.[135] Aggregate net operating profit of U.S. producers on domestic operations rose by over 350 percent from $1.3 billion in recession-year 1975 to $6.1 billion in 1977, declined moderately to $5.6 billion in 1978, and then fell precipitously by 76 percent to $1.3 billion in 1979. The first half of 1980 saw industry losses of $2.9 billion compared with a profit of $2.7 billion in the first half of 1979. The current year will be the first in recent history in which the industry shows aggregate losses. Volkswagen of American is the exception to the rule; its performance improved from 1978 when it incurred large startup costs through the first half of 1980 when it was the lone U.S. producer reporting profits.

Conclusion

There is no question that the domestic auto industry is seriously injured. The significant idling and underutilization of plant facilities, the inability of all firms except one to make any profits, and significant unemployment and underemployment paint a grim picture. By historical standards, the economic indicators during the present downturn are unique in two respects: improving performance for the small car sector and staggering losses for the industry as a whole.[136]

VI. Many Causes of Injury: Imports not a Substantial One

Although there is serious injury present in the passenger car industry, I have determined that increased imports do not constisute a substantial cause of the existing serious injury.

Standards and Framework

For an affirmative determination, section 201(b)(1) of the Trade Act of 1974 [137] requires that serious injury or threat of serious injury found in an import relief investigation be substantially caused by increasing imports. As made clear in section 201(b)(4), the requisite causal linkage is strong.

"Substantial cause" is defined to mean "a cause which is important and not less than any other cause." [138] This dual test has been consistently applied in Commission determinations since 1975. If any cause other than imports is found to be more important than imports, an affirmative determination is unwarranted. Furthermore, were there to be a host of causes of equal significance, each of which was not important standing alone, the law also directs a negative finding.

Alternate Causes—There is scant legislative direction on which alternative causes should be weighed against increased imports.

The senate Finance Committee Report does direct the Commission to examine the injury attributable to increased imports or of other causes, "such as change in technology or in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management." [139] By not shackling the Commission to an approach so finely detailed as to be unworkable in all potential cases, the statute gives the Commission maximum flexibility and discretion. Within these broad boundaries lies the responsibility for the Commission's determination to be "clear, well documented, and * * * decisive." [140]

An analysis of commission precedent is enlightening only to the extent that it confirms the case-by-case latitude of the ITC. Each party to the present investigation offered its own selection and interpretation of past cases. Some decisions have found causes of injury independent of and greater than increased imports. These have included changes in consumer taste,[141] introduction of a new technology causing demand to shift to a different product,[142] and oversupply of the domestic product accompanied by declining prices.[143]

In affirmative cases, other causes have often been considered and eliminated as less important than imports for various reasons. In affirmative determinations in industries affected by recession, there is a correlation between ruling out recession as a more important cause and imports rising absolutely or relatively in the declining market.[144] In my view, the ability of imports to perform relatively better than the domestic products in a downturn demands explanation; it cannot *ipso facto* establish that the imports are an important cause of serious injury as great as any other cause.[145]

Ford argued in its submissions that once the Commission finds imports to be among the causes of serious injury, it should stop its inquiry there and not consider the reasons for the increased imports as separate causes. Ford stated that there will always be reasons for an increase in imports. However, in some investigations, as noted above, the Commission has considered as causes of serious injury factors that could arguably have been treated as explanations of the increase in imports—such as shifts in consumer tastes or rising fuel prices. In other cases the Commission has declined to consider what could have been termed competing causes by considering them instead to be conditions of competition irrelevant to cause.

Never before in the history of section 201 has the issue of how and when to break down causes been so sharply joined. This case gives the Commission the opportunity to be as explicit as possible in its analytic framework and standards. My own reasoning follows.

Shift in Demand—The statute provides no guidance in dealing with shifts in consumer tastes as a cause of injury. The legislative history touches directly on the issue only once in the Senate Finance Committee's discussion of the factors that the Commission should consider with respect to threat of serious injury. It states that each indication of serious injury should be analyzed to determine whether it is a result of increased imports or one of a variety of other causes, including "changes in * * * consumers' tastes (or) domestic competition from substitute products." [146] This is a clear signal that a shift in demand may be deemed a cause alternative to imports. But it offers no

[135] The operations of U.S. producers are so highly integrated with their Canadian operations that only estimates compiled on the basis of differing arbitrary allocation methods are available.

[136] The big three (GM, Ford, Chrysler) have never before all reported losses at the same time as they did for the first nine months of 1980.

[137] 19 U.S.C. 2251(b)(1).

[138] S. Rept. No. 93-1298, 93d Cong., 2d Sess. (1974) at 119.

[139] S. Rept. No. 93-1298, 93d Cong., 2d Sess. (1974) at 121.

[140] *Id.*, at 121-22.

[141] *Slide Fasteners*, Inv. No. TA-201-6, USITC Pub. No. 757 (1975) at 51 and *Wrapper Tobacco*, Inv. No. TA-201-3, USITC Pub. No. 746 (1975) at 8-9.

[142] *Low Carbon Ferrochromium*, Inv. No. TA-201-20, USITC Pub. No. 746 (1975) at 8-9.

[143] *Certain Fish*, Inv. No. TA-201-41 (1980); *Live Cattle*, Inv. No. TA-201-25, USITC Pub. No. 834 (1977) at 6.

[144] Ford Post-Hearing Brief at 27.

[145] Findings on such other questions as the scope of the industry can also have an impact on the causal analysis. In *Mushrooms*, Inv. No. TA-201-42, USITC Pub. No. 1089 (1980), the imported product was canned while a substantial portion of the domestic industry was devoted to marketing fresh mushrooms. Had the two been deemed separate industries, the determination might well have been different.

[146] This consideration accounts in part for the hotly contested issue of how many industries were the subject of this investigation.

help on the question of whether the shift can occur within the industry and still be a separate cause.

In past import relief investigations, shift in demand has tended to be discussed by the Commission where it found an independent "greater cause" than imports (in negative determinations) [147] or where it used the process of elimination to establish that imports were a greater cause of injury than a list of alternate factors, including change in tastes (in affirmative cases).[148] In other investigations, the Commission avoided treating the shift in demand as an alternative cause.[149]

On the one hand, Honda argued that the Commission has explicitly considered intra-industry shifts in negative determinations.[150] Neither of the cases cited, however, is particularly helpful in analyzing the automobile investigation.[151] There is no clear precedent for considering a shift in consumer taste or demand to a product within the scope of an industry to be an alternative, greater cause of injury than increased imports. However, the Commission has sufficient discretion to do so if supported by the facts.

On the other hand, Ford argued that change in consumer tastes must be a shift to a product outside the scope of the domestic industry before it can be considered as an alternative to increased imports as a cause of serious injury.[152] If true, this means that the definition of industry could be crucial, depending on the relative importance of the shift.[153]

In the present case the Commission defined the scope of the passenger auto industry in the broadest sense. Despite significant differences in plant facilities for different products and high costs of converting between product lines, any further breakdown would have been arbitrary and obscured fundamental developments of the last decade. Similarly, it would be equally arbitrary to exclude a shift in consumer tastes as a cause worthy of separate consideration simply on the technicality of how the industry has been defined. I can see only one valid reservation to the principle of treating shift in demand within an industry as a separate cause: a shift in consumer tastes that is *per se* a shift in demand toward imports should not be treated as a cause of injury separate from those imports.

Cyclical Industries—The historical cyclicality of the auto industry also raised a serious conceptual problem related to both injury and cause. Should a "normal" business cycle decline in overall demand be factored out of the total injury picture? Should only injury beyond that expected be assessed in determining serious injury and causation? The questions cut both ways. By factoring out normal declines, it becomes more difficult for a cyclical industry to demonstrate serious injury; yet, it is less difficult to show substantial causation because an important non-import source of injury has been removed from the picture. The opposite effects occur if you factor in normal declines.

Review of Commission precedent, the arguments of the parties to this investigation, and legislative history revealed that this important conceptual question has never been directly reached in prior Commission decisions on recession-beset industries. Advice elicited from interested parties in questioning at the hearing seemed to be that "cyclical industries should receive no special treatment." But that dictum begs the question as to which treatment is "special"—factoring in or factoring out normal cyclical behavior.

Commission practice, although not precisely on point and certainly not binding, supports the discretion of the Commission to analyze in any way it deems best the basis of industry performance against which to measure injury.[164]

Section 201(b)(2) directs the Commission to "take into account all economic factors which it considers relevant * * *." This would tend to support the argument that the Commission may analyze the impact of business cycles in any way it deems appropriate, including isolating their effects. However, section 201(b)(2)(A) states that, "with respect to serious injury, the significant idling of

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[147] S. Rept. No. 93-1298, 93d Cong., 2d Sess. (1974) at 121.

[148] Thus, in *Slide Fasteners* and *Wrapper Tobacco*, changes in consumer tastes were found to be greater causes of injury than increased imports. In both cases, the shift was to a product outside the scope of the industry being investigated. *See* Inv. No. TA-201-6, USITC Pub. No. 757 (1975) at 51, and Inv. No. TA-201-3, USITC Pub. No. 746 (1975) at 8-9, respectively. In *Footwear*, for example, the inability to accept and respond to style changes was cited as a possible cause of injury. *See* Inv. No. TA-201-18, USITC Pub. No. 799 (1977) at 13. In *Mushrooms* (1976), diversion of tastes from canned to fresh mushrooms was considered to be a lesser cause than increased imports. *See* Inv. No. TA-201-10, USITC Pub. No. 761 (1976) at 13-14. In both of these investigations, the shift was to a different product.

[149] For example, in *Sugar*, the shift in demand from natural sugars to corn sweeteners might have seemed a more important cause of injury than increased imports. However, the Commission considered corn sweeteners as part of the domestic industry and found affirmatively. *See* Inv. No. TA-201-16, USITC Pub. No. 807 (1977) at 161-62. Similarly, in *Iron Blue Pigments* the Commission determined in its definition of the industry that there was no commercial substitute to the like or directly competitive domestic product. *See Ferricyanide and Ferrocyanide Pigments (Iron Blue Pigments)*, Inv. No. TA-201-11, USITC Pub. No. 767 (1976). In *Mushrooms* (1976) the shift from canned to fresh mushrooms was not treated as a definitional problem, but once serious injury or threat thereof was found, the shift was absorbed as an industry condition irrelevant to substantial cause. The implication of this class of cases may be that shift in demand within the industry should not be considered a competing cause of serious injury. *Sugar*, in particular, seems analogous to the automobile case. However, the views of individual Commissioners tended to conclude that the shift to corn sweeteners, particularly in industrial applications, was less important than imports as a cause.

[150] Honda Post-Hearing Brief at 14-16.

[151] In *Live Cattle*, it is true that there was an increase in demand for the kind of beef and veal suitable for making ground beef and that this demand favored imported beef disproportionately. However, imports had declined relative to the increase in consumption, even though they had increased in absolute terms. The determination rested on a finding that imports were of "minor impact in comparison with the significant increase in supplies resulting from increased production." Honda's argument with respect to *Fishing Tackle* rests on analysis of one of the four separate industries identified by the Commission. The negative determination cited turned on a finding that the industry was not seriously injured. *See* Inv. No. TA-201-25, USITC Pub. No. 834 (1977) and Inv. No. TA-201-34, USITC Pub. No. 917 (1978), respectively.

[152] *e.g.*, Ford Pre-Hearing Brief at 29.

[153] This consideration accounts in part for the hotly contested issue of how many industries were the subject of this investigation.

[164] For example, in *Birch Plywood Doorskins*, Inv. No. TA-201-1, USITC Pub. No. 743 (1975), Commissioner Minchew considered the cyclical downturn in the industry as part of the norm against which injury was to be measured. The rest of the Commission, however, looked at the cyclical drop in demand as part of the injury and then weighed the relative importance of causes. IN *Bolts, Nuts, and Screws of Iron and Steel*, Inv. No. TA-201-2, USITC Pub. No. 747 (1975) at 11, Chairman Leonard stated " 'present' injury must be found by examining a time span which discounts brief and transitory episodes in the performance of the domestic industry and established a realistic performance for the industry in the present." Chairman Leonard made a similar statement in *Stainless Steel and Alloy Tool Steel*, Inv. No. TA-201-5, USITC Pub. No. 756 (1976) at 72. In contrast, also in the *Stainless Steel and Alloy Tool Steel* investigation, Vice Chairman Minchew noted at 47, "The two principal causes of injury to the domestic industry are increased imports and the cyclical nature of the industry." Although he concluded imports to be the most important cause of serious injury, Vice Chairman Minchew clearly analyzed cyclical downturn as part of the serious injury. The variety of approaches used by Commissioners is further emphasized by the separate views of Commissioner Ablondi in the *Stainless Steel and Alloy Tool Steel* investigation when, in selecting an appropriate period within which to measure injury, he states that, "it has been the established practice of the Commission under section 301 of the Trade Expansion Act as well as under section 201 of the 1974 Trade Act to analyze imports over a period of time of sufficient length to establish trends and thereby put aberrant or temporary conditions into proper perspective." USITC Pub. No. 756 at 53 (citing *Ceramic Table and Kitchen Articles, Including Dinnerware*, TEA-1-22, TC Pub. 406 (1971); *Bagatelle, Billiard, and Pool Balls*, TEA-1-19, TC Pub. 347 (1971); *Nonrubber Footwear*, TEA-1-18, TC Pub. 359 (1971) at 10-11 (Commissioners Clubb and Moore) and 37 (Commissioner Leonard).

productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant underemployment within the industry" are among the factors that the Commission must consider. These appear to be the types of negative indices apparent in business cycle downturns. Thus, it could be argued that section 201(b)(2)(A) envisions no elimination of injury of one sort (*i.e.*, that caused by normal business cycle downturn) from an analysis of whether the industry in question is seriously injured. It is unlikely that Congress intended to make relief more difficult to obtain for industries beset by repetitive cyclical downturns.

Because each recession is individual in its timing, severity and expected recovery, choosing a standard can be hazardous.[155] I have, therefore, decided to consider injury from all sources including normal recessions in order to avoid tampering with the objective economic indicators which the Commission, as well as private industry, relies on for measuring economic health.[156]

Mathematical Tests—No previous case before the Commission has been the subject of so much sophisticated econometric modeling and market analysis. Despite the conflicting testimony, replies and counter-replies, I have found that most parties on all sides made impressive attempts to provide the Commission with scientific analysis. The results of the various presentations were critically dependent on their assumptions and could not be used to resolve which assumptions in fact were correct, *e.g.*, which factors should be treated as separate causes and which merely as explanations of how imports caused injury? Which base period or year should constitute a proper reference in a cyclical industry? Furthermore, the fact that the domestic automotive industry and its components parts suppliers constitute over five percent of the U.S. gross national product means that any influence on the industry's performance has a significant feedback on national income which, in turn, further affects auto sales. Because the industry tends to lead most recessions, independent modeling of recessionary influences on the industry is theoretically impossible. In a mathematical sense, there are very few truly independent variables here. And because many of the factors important to an understanding of the industry operate simultaneously, any econometric separation of their independent effects becomes a dubious effort. The Senate Finance Committee explicitly recognized this situation:

> The Committee recognized that "weighing causes in a dynamic economy is not always possible. It is not intended that a mathematical test be applied by the Commission. The Commissioners will have to assure themselves that imports represent a substantial cause or threat of injury, and not just one of a multitude of equal causes or threats of injury. It is not intended that the escape clause criteria go from one extreme of excessive rigidity to complete laxity. An industry must be seriously injured or threatened by an absolute increase in imports, and the imports must be deemed to be a substantial cause of the injury before an affirmative determintion should be made.[157]

While these analytical tools are helpful in clarifying the issues and dimensions of the case, their shortcomings prevented me from relying on them for pivotal decisions.

Section 201 and the Case-by-Case Approach—All relevant economic factors must be considered, but the question remains—how? Commission precedent suggests that the answer is to be found in the economic rather than the legal sphere.

The fact that when viewed narrowly, precedents may be cited for viewing particular factors either as causes separate from or as explanations of increasing imports should not be disturbing.[158] The import relief statute is the broadest jurisdiction assigned to the Commission. The impact of all imports on entire domestic industries is examined. Unlike countervailing duty and dumping cases, there is no well-defined measurable unfair price margin to examine. Section 201 is necessarily broad. It is doubtful that it is theoretically possible for Congress to have made the criteria more specific on the issues of causation that we might have applied in this case and still have an import relief framework applicable to the full range of industries present in the world's largest economy.[159] Each industry has its own structure and logic. Each case requires the qualitative judgment and intelligence of the Commissioners who must reach a determination. Were these statements not true, the Commissioner's deliberations might better be replaced by computer simulations. Though I am not without self-interest in this matter, I feel there is no mechanical alternative that could give better results than case-by-case analysis.

Causes of Injury

I have attempted to concentrate on those phenomena that are relatively independent. To the extent that an increase in imports seemed to be merely incidental to a far more fundamental phenomenon, I have decided to analyze that fundamental phenomenon as a separate cause. Under the rubric "imports as an independent cause," I shall treat those sales which imports have captured in head-on competition with domestic autos due to attributes such as price, design, and quality that attract customers.

A full understanding of the industry's problems necessitates an examination of a complex web of events. The injury sustained by the automobile industry can best be explained by analyzing four fundamental phenomena:

(1) A general decline in demand due to rapidly increasing costs of car ownership and operation (added to normal—if not precisely predictable—recessionary effects on consumer income and confidence);

(2) A seemingly permanent shift in consumer tastes to relatively smaller, more fuel-efficient autos;

(3) A substantially negative accounting impact on profits resulting from huge investments to transform the industry; and

(4) Success of imports in head-to-head competition.

The decline in demand and shift in demand are more important causes of injury to the auto industry than increasing imports, *per se*. I have not been able to evaluate fully the relative significance of the massive capital costs

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[155] Indeed, the National Bureau of Economic Research has been at the task for many decades without any definitive conclusions.

[156] Congress has recognized that the relative weighing of alternate causes of injury is unquestionably subjective. *See* S. Rept. No. 93-1298, 93d Cong., 2d Sess. (1974) at 120. Professor J. Jackson in *World Trade and the Law of the GATT* (Section 23.3, p. 561, 1969) stated that "serious" investigation of the term serious injury "has occurred only once in practice"—the *Hatters' Fur* Case (1950). The GATT Working Party appointed to investigate the dispute found that even serious injury, no less its causation, "is essentially a matter of economic and social judgment involving a considerable subjective element." (Report on Withdrawal by the United States of a Tariff Concession under Article XIX of the GATT. Geneva, 1951, at 22.)

[157] S. Rept. No. 93-1298, 93rd Cong., 2d Sess. (1974) at 120-21.

[158] The legal doctrine of precedents, *stare decisis*, does not strictly apply to administrative agencies. An agency is free to change its policy, or even its interpretation of a statute, so long as it explains the reasons. A section 201 decision may be set aside by the courts only if it is shown to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *See* Administrative Procedure Act, 5 U.S.C. 706(2)(A).

[159] Over the last three decades, Congress has passed three different import relief statutes. Although the thresholds of injury and standards for causation (major, principal, substantial) have been debated and changed, Congress has neither sought to delimit narrowly the factors which the Commission should consider nor direct precisely how the causes should be broken down.

of transforming the industry; however, I believe that their impact on domestic industry performance is at least of the same magnitude as that of imports. It is doubtful that in the absence of the first three causes the remaining injury attributable to imports would be serious.

General Decline in Demand—Recessions are always the subject of much debate. Any discussion of them benefits greatly from hindsight * * * a luxury not yet afforded the Commission in this case. It is clear at this time that two highly cyclical leading sectors—housing and autos—have performed far more poorly than the economy as a whole due to a set of factors already quite apparent. The general decline in automobile consumption by 25 percent from the first half of 1979 to the first half of 1980 is in greatest part due to factors peculiar in their severity to the present recession and quite unrelated to the presence of imports in the American market place.

Consumer demand for automobiles is determined by the need for private transportation, disposable income (essentially take-home pay net of taxes and retirement deductions), the value of trade-in cars, and true price of auto ownership and operation. The costs of auto ownership consist of depreciation,[160] finance charges, gasoline, maintenance, insurance, parking, tolls, and taxes such as registration fees. None of the important components have advanced more slowly than general price trends. Studies have been performed for the American Automobile Association which attempt to include most of these components (except financing) over the last five years.[161] For each class of cars examined, costs between 1975 and 1980 rose rapidly in nominal terms. Surprisingly, the trends were less marked when converted to consant dollars—a slow *decline* from 1975 to 1978 and then a more rapid *rise* from 1978 through 1980.[162]

The underlying reasons for the growth of ownership/operation costs of autos have nothing whatever to do with imports; the three main culprits have been the explosion of gasoline prices, the rapid rise in new car prices, and the credit crunch. Gasoline price inflation has been due to several factors: price increases by member of the Organization of Petroleum Exporting Countries (OPEC) in late-1978, which added significantly to the cost of crude oil; the political revolution in Iran in late-1978, which curtailed petroleum production; and the U.S. Government's decontrol of gasoline prices at about the same time, which permits retail prices to rise further—about two cents per gallon each month over current prices until final decontrol in September 1981. The combined effect of all these events has been immediate and substantial. Between January 1979 and June 1980 the overall price of gasoline increased from $0.65 a gallon to about $1.30 a gallon, a greater increase than had occurred in the entire twenty-year period prior to 1979. The increase, outpacing prices in general, added significantly to the consumer's cost of operating an automobile.

Particularly in 1980, new car prices have advanced significantly. Productivity has been stagnant in the industry due to serious absenteeism and social problems among the workers and delayed introduction of new state-of-the-art production techniques. Technological changes, which bring higher productivity, will likely occur most rapidly once the completely new product lines are in place. Thus, the price savings from productivity increased during the transformation now underway in the industry are yet to be felt.

The unprecedented high cost of consumer credit during 1979 and 1980 has been perhaps the single most serious factor in the decline in demand. With the prime rate in the double digits and consumer credit often available only after states have revoked or revised their usury laws, finance costs both to dealers and ultimate purchasers have skyrocketed. With three-quarters of domestic sales financed,[163] potential customers saw monthly payments balloon. (The phenomenon is quite similar to what has occurred in the housing markets. Houses are not readily imported, however, so the staggering effects of the rise in finance charges has not been obscured by other factors.)

The rise in retail costs during the last two years has been accomplished by an erosion of per capita real disposal income, which decline from $4,536 (1972 dollars) in first-quarter 1979, to $4,425 in the second quarter of 1980. While the numbers themselves are not huge, one must remember that Americans are accustomed to an increasing living standard; any decline has a shocking effect. It is not purely psychological; people are poorer than they were two years ago.

Underneath the market phenomena lie changes in the perceived need for private transport. The domestic market in the last decade became principally a replacement market; expanded ownership became primarily a response to slow population growth rather than to growth of two- and three-car families. The development of mass transit systems in certain metropolitan areas and rental car fleets has relieved some of the exigency for every adult to have access to a private automobile. Furthermore, between 1972 and 1979, the average age of passenger cars on the road grew from 5.7 years to 6.4 years, probably reflecting changed buying habits more than improved quality. The penchant for additional per capita auto consumption seems to have been quenched as the domestic market reached maturity.

Caught in the scissors of increasing real prices and declining real income, numerous U.S. customers were cut out of the auto market over the last two years. Although the discussion of price effects has been in real terms (constant dollars), most consumers are not in constant touch with the auto market. New autos are usually kept four or five years before their first resale. Thus, consumers have not been as gradually hardened to recent inflation of the price of cars compared to prices of items bought more frequently. One may reasonably assume that most consumers entering the market during the last two years have not shopped for a car since 1975 when nominal prices were approximately 30 percent lower than they are now.[164] The unprecedented inflation in new car prices probably shocked customers as a result of some lingering "money illusion." Adjustment to the new situation has been delayed by the belief that credit costs will come down in the future.

Beyond any general decline in auto sales lies the phenomenal collapse of the market for the traditional large cars

[160] Depreciation is the appropriate way of moving from the purchase price of a consumer durable to a yearly cost.

[161] *See* Runzheimer and Company, "Domestic Automobile Cost Data" (November 1980). The data prepared for the USITC cover 1975–1980 and are based on a study commissioned by the American Automobile Association.

[162] There is an index number problem here because of the important role of cost of transportation in the consumer price index (C.P.I.) which is used as a deflator. When real auto costs fall relative to the C.P.I., they are falling even more rapidly with respect to other prices which go into calculating the C.P.I. More important, because in the crucial 1978–1980 period real auto costs rose faster than the C.P.I., they have been advancing even faster than other prices.

[163] *Automotive News*, "Annual Data Issue" (1980). The proportion varies over the business cycle but seems to have been slowly rising during the last decade. The source data reflect only traceable credit and not personal loans from friends and relatives.

[164] Report at A–57. This figure is a lower bound since small car share has increased rapidly and the producer price index is for all cars, not one particular model. *Also see* Report at A–60.

which have been the historic mainstay of profits for the industry. Instead of a smooth transition dictated at the margin by changing costs, consumers suddenly lost their appetite for gas guzzlers when the Iranian revolution brought gas lines. Neither larger gas tanks to improve large car cruising range nor even major fuel economy improvements from down-sizing large cars could stem the tide.

Reinforcing decline in demand has been a fall in the "blue book" value of large cars. With the increasing disparity between trade-in value and new car prices, most potential buyers seem to have left the market place entirely to wait out a credit squeeze, which saw record interest rates accompanied by a quintupling of the refusal rate on credit applications to almost 50 percent. The prospect of the new generation of fuel-efficient five- or six-passenger cars on the way in 1981 and 1982 gave this segment of the public added reason to wait.[165]

Shift in Demand—The general decline in demand has been related to growth in the real costs of auto ownership/operation during the last two years. Such an effect might be viewed as an "income effect"; as the price of a good rises, consumers, feeling relatively poorer, tend to purchase less. But there are also "substitution" effects.

As demand declined in 1979 and 1980, it also shifted: sales of large cars—the mainstay of the U.S. auto industry—fell faster than overall consumption from 1975 to 1978. Large cars declined to 29.2 percent of apparent consumption by January-June 1980. The shift in demand to smaller, more fuel-efficient autos has followed the relative increase in total cost of operation of large *versus* small cars.[166] as a consequence of the continuing political volatility of the Middle East, the threat of future OPEC price increases, possible increases in State gasoline taxes, and government deregulation of gas prices, many consumers deeply doubt the future stability of gasoline prices. All observers and industry members regard the shift to smaller, more fuel-efficient vehicles as irreversible.

The changes in the product mix of U.S. producers that accompainied the shift in demand had a special effect on industry profits. Since the late-1920s when General Motors overtook Ford as the number one producer, the domestic industry has been oriented toward production of high-performance, larger cars with many options,[167] models with significantly higher profit margins. Until recently, the theme has been that mini cars mean mini profits.[168] By 1979 the domestic mix had shifted toward models that indeed yielded the lowest profits.

A more general phenomenon, of which the shift in mix is but one part, can be observed in the long-term trend of net profits to net sales in the auto industry.[169] The data for the last twenty years show cyclical behavior for the aggregate profit margins, but there is also an alarming secular trend: from 1960 to 1980 each successive peak (or trough) is lower than the previous peak (or trough). Each year the industry has had to sell more cars to make the same absolute level of profits. Clearly this trend could not go on forever. The years of reckoning were 1979–1980. A readjustment was inevitable, and imports have had little to do with this ominous trend.

Increased Capital Outlays—Capital expenditures by U.S. producers on their domestic operations increased from 35 percent in 1976 to almost 130 percent in 1979. Much of the decline in the industry's return to its investment after 1974 has been caused by the depreciation and amortization of these rapidly increasing capital expenditures which will not realize their full income potential until future periods. A substantial portion of the forty billion dollar transformation of the domestic industry has already been committed. This effect on one of the few indicators significantly worse in this recession than in previous ones is distinct from the effects on profits of the decline in demand, the collapse of the large car market, and the shift in product mix.

Imports—Imports, particularly those from Japan, have dramatically increased their market share. The extent to which an imported product has been able to capture sales in direct competition with domestic product to the detriment of the domestic industry is the extent to which they can be considered a cause of injury.

All the pricing information suggests that the success of imported automobiles has not been based on any competitive price advantage. For example, the export price index for Japanese autos grew 38 percent from the beginning of 1976 to the end of 1979 while the producer price index for domestic sales grew only 29 percent during the same period. The price data are quite complex, but there are no indications that Japanes cars or any other imports enjoy any *direct* price advantage.

Quality is an attribute that can function as a surrogate for price in attracting customers because of the implicit repair cost advantage it represents. And imports, particularly Japanese autos, have enjoyed a definite advantage in the perception of quality they have been able to generate among U.S. customers. Surveys by *Wards Auto World, Consumer Reports*, J.D. Power and Associates, and Rogers National Research clearly show that domestic cars are viewed as having lower quality than foreign ones.[170]

A secondary question is whether these perceptions are justified. Useful data to establish objectively the relative quality of automibiles were unavailable.[171]

Although their value in assessing product safety and quality performance is therefore limited, the data are supportive of the consumer surveys. Although the recall records in the United States of European producers were generally similar to those of General Motors, Ford, Chrysler and American Motors, none of the four largest selling Japanese makers had a recall rate higher

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[165] If this thesis is correct, the average age of cars on the road in 1980 should be measurably higher than the figure for 1979. The figure is not yet available.

[166] The AAA cost-of-ownership data broken down by size of autos show that between 1975 and 1977, the difference between the annual costs of "full-size" cars and subcompacts narrowed, particularly from 1975 to 1976 when domestic dealers had trouble clearing their smaller cars. However, by 1980 full size cars had opened up a greater differential than they had shown in 1975:

Year	Ratio of annual costs of full-size/ sub-compact
1975	1.40
1977	1.23
1980	1.43

[167] Report at A–71.

[168] *See*, for instance, statements of Ford executive director for business strategy Robert R. Reilly, quoted by Robert J. Samuelson, "The U.S. Auto Industry—Under Foreign Siege," *National Journal*, March 15, 1980 at 427.

[169] The only data available for more than two business cycles are based on the ratio of consolidated worldwide net profits to net sales of Chrysler, Ford, and General Motors. For the purposes of my point here, I do not believe the inadequacies of these data are critical.

[170] Report at A–65 and 89.

[171] Such data might include the cost by car-make of privately-offered extended warranties. Analysis of private extended warranty price data shows little or no difference between costs of such warranties on the basis of whether the car is imported or domestic. Post-Hearing Brief of the American International Automobile Dealers Association, Appendix III. However, two compainies have informed the Commission that they are in the process of converting from a price system based on car value to one based on actual repair records. They expect that the results will yield lower premiums for Japanese autos. Such expectations are no more objective than the surveys of consumer perceptions.

than one-third the *lowest* rate shown by a U.S. producer.[172] The documented efforts of the UAW and the producers to improve domestic quality control support a conclusion that the consumer's perceptions have in fact been justified.[173]

I have treated quality considerations as an explanation of how imports may have contributed to the injury of the domestic industry because they function in the same manner as a price advantage. I have not treated fuel-economy, a definite factor in the choice of imports, in the same fashion because imports have only been incidental beneficiaries of a more fundamental shift in demand to smaller cars. This shift has also definitely benefitted domestic small cars such as the Chevrolet Chevette, whose production lines have been operating at full capacity during the last two years.

The independent contribution of imports to injury must be assessed in relation to other factors such as the decline and shift in demand. The shift/share analysis prepared by ITC staff aided such an evaluation.[174] In the period January 1979 to June 1980 (when domestic industry performance was poor) the maximum potential loss to U.S. producers resulting from decline in consumption was almost three times that resulting from increased import penetration.[175] Furthermore, a good portion of import penetration results from shift in demand. Adjustments for this consideration would further increase the importance of declining demand relative to imports as a cause of injury.

Demographic considerations explain part of the dramatic rise in import penetration during this recession. Because imports' appeal has been historically greater to white-collar workers on both the East and West Coasts and because larger domestic cars have had their better markets among blue collar workers, the consumers of domestic cars are more vulnerable to cyclical swings in the economy since their employment tends to concentrate in sectors harder hit by recessions.[176] Sales of imports are not as prone to cyclical variation, and consequently their market share is counter-cyclical.

Causes Not Found Relevant—Many observers and even insiders [177] have blamed poor management for the industry's failure to lead or even successfully follow the shift in demand. Following the Arab oil boycott of 1973, consumers' demand for small cars outstripped supply in 1974. However, domestic small car sales weakened almost immediately in 1975 as consumers switched back to larger cars. As late of 1978, larger V–8 engines were on back-order.

The explanation for this fickle behavior is surprising for its simplicity. Real gas prices and the relative costs of operating large cars declined. The auto companies followed their customers back to large cars. In 1975, Lee Iacocca thanked Henry Ford II for overruling him on the idea to inaugurate Ford Fiesta production in this country. In the meantime, Ford and General Motors had committed themselves to the development of the Escort and Chevette, respectively. Because the planning and production of a new car required four to six years, it is extremely fortunate that those plans were not dropped. By late-1978 the fickle customer was back scrambling for small cars. This kind of consumer behavior demonstrates the power of prices and the limits of corporate power in dictating consumer preference.

Since 1974 the only party to the ITC proceedings that opposed gasoline price increases was the initial petitioner, the UAW.[178] By 1975 all domestic auto companies are on record for deregulation of gasoline prices.[179] Leading members of Congress announced to the public that gasoline would rise no more than ten cents a gallon during the remainder of the decade.[180] Given the response of the consuming public to small cars and that of the UAW and the Congress to proposals for decontrol in 1975, the attacks on management who planned for a slow, gradual changeover to smaller cars prior to 1979 seems unfair.

GM and Ford claimed in submissions and testimony that government safety, environmental and fuel-economy regulations were also causes of injury. The corporate average fuel economy (CAFE) standards enacted in 1975 relate to the discussion of demand shift as they were the only impetus for a period of time for domestic companies to produce more fuel-efficient models. Thanks to these regulations, the domestic companies were not caught even less prepared for the shift of the last two years. But as a substitute for decontrol, hindsight allows us to see that they were deficient in two respects. First, if decontrol had gone through earlier, the shift would have been gradual with less sudden battering of the domestic firms. Secondly, fulfilling CAFE standards was *not* the same as producing the car mix needed by 1978. It was easier to meet the production signals from CAFE regulations by first downsizing the largest cars than by developing all new small cars. Increased overall fleet fuel economy was achieved more rapidly and with smaller investments by raising the largest portion of the market (full-size and intermediate cars) from 15 mpg to 25 mpg. But when the consumer shift finally came, the moderately fuel-efficient, downsized cars were shunned though they were no longer "guzzlers" in the traditional sense.[181]

Because expenditures made to satisfy regulations have been overwhelmingly dominated by those related to fuel economy,[182] the case is extremely weak that government regulation made an important contribution to generating serious injury in the industry.

VII. Serious Injury Will Continue: Imports Not a Substantial Cause

The unusual problems suffered by this industry in terms of sales, profits and employment will likely continue. However, imports are not threatening to become a substantial cause of any future injury. The plans underway for restructuring the industry address many of the industry's problems and do not depend in any demonstrable fashion on import relief. If anything, purely domestic factors including continuing difficulties in the cost and availability of

[172] Submission of Automobile Importers of America, November 7, 1980, letter in response to request of Commissioner Stern (Hearing Transcript at 891).

[173] *See* Hearing Transcript at 7–8, 142–44, and 612.

[174] The simulation calculations allow consumption and import penetration to change alternately while the other is held constant. Report at A–69, 96.

[175] Report, Table 70.

[176] Nissan Pre-Hearing Brief at 21–26.

[177] See John DeLorean, *On A Clear Day You Can See General Motors*, Grosse Pointe, Mich.: Wright Enterprises, 1979.

[178] UAW President Lenorad Woodcock in *Proposals for Constructive Reform*, February 15, 1974, in Hearing before the Committee on Interstate and Foreign Commerce, April 1974, at 283 states: "But we are also completely opposed to seeing gas consumption reduced by massive price increases without any compensation for the low- and middle-income people who are unjustly overburdened * * *. We also need to reduce the claim of the private automobile on our energy supplies by raising the fuel efficiency of the typical model on the road * * *. What we need are mandatory fuel efficiency requirements just as we have mandatory pollution-control requirements."

[179] Information was not available on Chrysler's position on the decontrol issue.

[180] *See* W. Tucker, "The Wreck Of The Auto Industry," *Harper's*, Nov. 1978 at 54–55.

[181] Since 1979 the industry has been pushed toward greater fuel economy by consumer demand rather than CAFE standards. In fact the 1983 standards, once termed unrealistic or unachievable, have now been surpassed.

Regarding environmental and safety regulations, no evidence was offered that the standards demanded of U.S. producers are any more onerous than those already in force in many of the imports' home markets.

[182] Report at A–46.

consumer credit and unavoidable time lags in the introduction of new fuel-efficient models may retard the industry's recovery. The continued incidence of high capital expenditures will restrain improvements in profits while rapid productivity improvements will prevent employment from ever recovering to former levels. However, in any event, the long-term prospects for the domestic industry as a whole are good as it increasingly focuses on a world rather than national market with competitive, fuel-efficient, downsized automobiles with state-of-the-art technology.

Standards and Framework

The report of the House Committee on Ways and Means states that "threat" of serious injury exists "when serious injury, although not yet existing, is imminent." [183] The report of the Senate Committee on Finance supports this interpretation and adds:

> The existence of any of these factors such as the growth in inventory would not in itself be relevant to the threat of injury from imports if it resulted from conditions unrelated to imports. Such conditions could arise from a variety of other causes, such as changes in technology or in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management. It is the intention of the Committee that the threat of serious injury exists when serious injury, although not yet existing, is clearly imminent if import trends continued unabated. [184]

Commission precedents have not fully and directly explained the meaning of "imminent" with respect to the time frame to be considered under section 201 of the Trade Act. [185] The dictionary is not much help because it shows "imminent" to mean, among other things, "threatening". [186] There is no other legislative direction beyond what has been cited above.

Since there is apparently little difference between the concepts of "threat" and "likelihood" of injury, it is useful to consider how the time frame for threat or likelihood have been dealt with in other import relief statutes. The Senate Finance Committee Report on the Trade Act of 1974 concludes without criticism that the Commission in antidumping cases based determinations of likelihood of injury upon "evidence showing that the likelihood is real and imminent and not on mere supposition, speculation, or conjecture." [187]

I found indications of real and imminent threat based on the latest data (first-half 1980 compared to the same period a year earlier), reliable information on the immediate present, and forecasts over the next year. Beyond this period, I have considered the best tentative information available on expected trends through 1985. Despite the fact that a look into the future becomes more speculative the further from the present one goes, and that 1985 is beyond the "real and imminent" standard Congress intended, I believe that considering the medium term future may be enlightening because there is little prospect for the industry to return to health in the next year.

Factors in Substantial Cause of Threat—With respect to cause of threat, the statute does not distinguish in section 201(b)(2)(c) between causal examination of present and threatened serious injury. I have considered all factors enumerated in that section plus other relevant information. For example, I have considered whether the alleged cause of injury—imports—is sufficiently damaging to produce the predicted effect. Though not transparent in previous Commission determinations, this approach—a reflection of the potential effectiveness of a remedy—has been helpful because of the cyclical character of this industry. The principle can be stated: if import relief would significantly ameliorate the problems, then imports must be an important cause. If, on the other hand, the domestic industry's injury would not be remedied by import relief, some other factor must be more important than imports.

The Near Term Future and Threat Determination

The recent negative trends noted in Section IV and V for all indicators in 1979 and the first half of 1980 seem to have moderated recently. The Commission is not in a position to evaluate "trends" based on daily progress reports which abound in the press. But noting developments of the last two months does further reinforce my understanding that imports are not among the most important causes of injury.

Latest Domestic Developments—October 1980 sales, though down eight percent from those of the same month the previous year, seemed to indicate a gradual recovery from the depths reported at mid-year. Sales of the newly-introduced cars are proceeding as fast as they can be supplied. [188] No plant shutdowns have been reported for the newer, more fuel-efficient models, although minor suspensions of production for inventory adjustment continue for other models. Despite general disappointment that the introduction of the new generation of cars was not sufficient to pull the auto firms out of the slump, overtime continues to be reported for plants producing these cars.

Tight credit is the most pervasive problem preventing recovery in demand. [189] The fall of the prime rate to 11.6 percent in the third quarter of 1980 proved to be a short-term respite. In recent weeks it has once again shot above 17 percent. Given the facts that three-quarters of cars are bought on credit and that the length of repayment periods and rejection rates on loan applications are at historically high levels, consumers continue to be frightened out of the market. This credit crisis shows signs of continuing well into next year. However, while replacement purchases may be delayed, most of these consumers will reenter the market place in the next two years.

Imports—Import sales followed their expected October pattern by falling to 22 percent. Furthermore, the Japanese share of imports was down from earlier levels for the 1979–1980 period. The counter-cyclical behavior of import penetration seems to have begin asserting itself. There are no indications that imported automobiles will be able to increase their market share from present levels.

In their confidential submissions, Japanese producers claimed that their investment plans provide for modest expansion of capacity, generally in line with growth of the Japanese home market and expanded sales in developing countries. Japanese

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[183] H. Rept. No. 93–571, 93d Cong., 1st Sess. at 47.

[184] S. Rept. No. 93–1298, 93d Cong., 2d Sess. (1974) at 121.

[185] Commissioners Alberger, Calhoun and Stern made reference to a "real and imminent" standard in the most recent import relief investigation. *See Mushrooms*, Inv. No. TA–201–43, USITC Pub. No. 1089 (1980) at 17.

[186] *See Webster's Seventh New Collegiate Dictionary*, 1963, p. 417.

[187] S. Rept. No. 93–2196, *op cit.* at 180. Commissioners Stern and Alberger noted that the concept of threat appeared uniform in meaning in all Commission import relief jurisdictions in *Anhydrous Ammonia from the U.S.S.R.*, Inv. No. TA–406–5, USITC Pub. No. 1006 (1979) at 32.

[188] There have been some problems in the introduction of Chrysler's new K-cars, but these seem to have been based on a miscalculation of what consumers wanted. The first K-cars were loaded with expensive options that potential purchasers suffering reduced real per capita disposable incomes were not willing to buy. Start-up problems are quite common when new models are first introduced. Furthermore, Chrysler must contend with an image problem created by the uncertainty among consumers about the company's future. Chrysler's problems extend back to 1978 when the industry as a whole was healthy.

[189] Recent data show leading indicators turning around yet both the auto and houing industries remain hampered by high and rising interest rates.

producers profess to expect a strong recovery during the next two years in the United States and to hope for increased sales with declining market share.[190] Potential problems lie in the growing sensitivity of the European Community (EC) to the improving performance of Japanese exports of automobiles to Europe. Judgments about what export restrictions the EC might apply and whether Japanese producers might divert shipments to the United States are too speculative to give weight in coming to a determination. Part of the speculative character of such a consideration is that any European response would undoubtedly be affected by development in the United States, including the determination of this Commission.

The Medium Term Future

The key questions about the prospects for recovery are:

(1) When will the slump in the industry end?

(2) Will domestic producers supply the kinds of cars U.S. consumers are and will be demanding?

(3) Will U.S. consumers buy them?

(4) Will the domestic industry make adequate profits?

(5) Will unemployment in the industry be reduced?

(6) Will import relief make a difference?

(1) Growing Demand—Injury due to decline in demand for autos should diminish. All forecasts show the economy as a whole recovering from the 1980 recession by 1982, with auto sales showing a more sluggish recovery.[191] Similar predictions show 1978 peak levels of total sales not returning until 1983. Auto import levels are predicted to remain almost constant, peaking at 2.4 million units in 1983, compared to 1979–1980 levels of about 2.3 million units. Thus, the import share of the U.S. market is expected to decrease steadily from about 25–26 percent in 1980 to 20–22 percent in 1985.

(2) Restructuring of the Industry—Plans already well underway will by 1985 have resulted in a completely transformed domestic industry. The shift in demand will no longer be a potential cause of injury because domestic production will have fully shifted to meet it. By 1985 virtually every operating plant in the nation will have been converted or built from scratch to produce new-generation autos at every level of size and/or luxury. In this process, the meaning of terms such as full-size and intermediate will be completely rewritten. The largest cars will accommodate five to six passengers, the smallest only two; however, the largest cars will be significantly lighter and shorter than present full-size cars. With a domestic price tag of $40 billion, this will constitute the largest peacetime industrial transformation ever attempted. Thus, with the possible exception of minicars, which may become a factor in the end of the period, the cars in demand will be available from U.S. producers.

(3) Consumer Loyalty—The rapid shift in demand and the chaotic character of the market place in the present period affords little support for the view that consumers, having chosen imports in growing numbers, will not return to domestic cars for their next purchase.

Ford Vice President Bidwell recently stated:

> If you have an equal car at a reasonably equal price, people will buy from you rather than from foreigners.[192]

Considerable attention has been focused on Detroit's new offerings. Those purchasing autos in the next two years are unlikely to have bought cars during the most recent two years. When recent purchasers of imports return to the market in four to five years, U.S. producers will be well prepared to woo them if the present strenuous adjustment efforts are continued.

Problems do remain in the price and quality areas. U.S. producers and the UAW have devoted considerable attention to improving the quality of domestic autos, particularly, the "fit and finish" for which the Japanese competition is so highly rated.

As for prices, it is completely speculative to predict whether any nation's products will have a price advantage. Costs, excepting for capital,[193] do not appear to be growing more rapidly for U.S. producers than for their foreign competitors. The UAW is cooperating in the implementation of productivity changes which will close the gap between domestic and Japanese productivity rates.[194] The increased prices of new cars will present a problem until real disposable income of U.S. consumers begins to rise and new entrants to the market become more accustomed to the effects of the last five years of relatively high inflation in the U.S.

(4) Profits—The price structure of the U.S. automotive industry has long been geared toward higher margins on larger, more expensive cars, with profitable extras like power steering and brakes. In a sense, purchasers of smaller cars and stripped versions have benefitted from the industry's ability to extract disproportionate premiums from purchasers of larger, more luxurious models. As the trend to smaller cars has progressed, greater and greater sales volumes have been required to generate any given level of profit. The collapse of the large car market made the inevitable structural change an immediate order of business. All U.S. auto makers are moving toward a price structure which will allow them to make a reasonable level of profit on all classes of cars. Temporarily, the old pattern has been reversed. Downsized models of larger cars with traditional power trains will sustain lower price increases. The profits will be made on the more fuel-efficient, newer models. Preliminary signs show prices of imported autos also increasing.

(5) Employment—All forecasts for the future predict a permanently reduced labor force in this industry. Employment will never return to 1978 levels. A study by the Department of Transportation Economic Planning Group suggests that employment growth due to market recovery will be diminished every year through 1975 by losses due to rapid productivity improvements as new production changeovers proceed. For Ford and GM alone, cumulative productivity-induced job losses will grow from 65,000 in 1980 to 137,000 in 1985.[195] One may conclude that by 1985 the number of positions lost due to productivity improvements will equal over two-thirds of the number presently laid off in the industry.[196]

(6) Remedy Considerations—Analysis of confidential submissions by Ford and GM demonstrate that the ambitious transformation program they began in 1974 will continue. No tangible link between these plans and any requested import relief has been established.[197]

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[190] Nissan confidential submission, October 20, 1980. *Also* Toyota confidential submission, Nobember 3, 1980.

[191] Wharton Econometrics, Chase Econometrics, and Data Resources, Inc. have been consulted.

[192] Quoted in the *Wall Street Journal*, August 25, 1980.

[193] This is another area where continued high interest rates threaten domestic producers with injury.

[194] A study commissioned by the Science Council of Canada found some difference in the productivity of the North American (13 cars per man-year) and Japanese (16 per man-year) industries. *See:* N. B. MacDonald, *The Future of the Canadian Automotive Industry in the Context of the North American Industry* (November 1980) at 43–51.

[195] The study measures losses from 1978/1979 peak employment levels and assumes that no new plant closings occur. Other assumptions tend to understate or overstate employment gains, and so may off-set each other. I use the study simply as a rough indication of the future.

[196] USITC staff study on remedy considerations.

[197] The Ford confidential submission of November 21, 1980, established no persuasive connection between relief and its ability to raise capital during

Footnotes continued on next page

The transformation of the industry will take place in the absence of any import relief and would not be speeded by relief.[198] As for employment, the maximum number of jobs generated by such a quota would be less than 33,000—less than 17 percent of the number of auto workers now unemployed. Extending a strict relief program over the next five years, using a quota of 1.7 million units,[199] could generate $4.0 billion (1979 dollars)—or less than eight percent of the projected new investment of $40 billion.[200]

Ignoring the huge cost of any remedy to the public of the relatively small potential employment and profit gains, there are further problems which indicate that import relief is not the answer to the domestic industry's problems. The UAW and Ford have professed an interest in encouraging foreign auto producers to locate facilities in the United States. Two firms—Volkswagen and Honda—are well down this path. It appears that there is no simple method of designing a remedy that would avoid having just the opposite effect. Both Volkswagen and Honda have shown in confidential submissions that the UAW proposal, however well-meaning, would set up difficult-to-administer local content rules which would make establishing a domestic plant an enormous gamble. Honda has indicated that such a remedy might cause it to cancel its U.S. production plans.[201]

Furthermore, there are good reasons to believe that relief would be inimical to the interests of most other U.S. producers, because they have already become so highly integrated on an international scale.[202] General Motors, presently accounting for 63 percent of domestic production, has begun a serious program of worldwide expansion which could very well be threatened by rising trade barriers. GM appears to be in a position to make substantial gains over the next few years. American Motors, in financial crisis, is dependent on completion of major financing plans with the French producer, Renault. These plans could be seriously jeopardized by import relief. Chrysler has been rather silent with respect to relief. Its introduction of new-generation autos was further along than Ford's at the start of 1979. Its financial state seems to have been helped by its captive imports from Japan and its most pressing capital problems have been ameliorated by large federal loan guarantees.

Finally, it is not unequivocally clear that even Ford stands to benefit a great deal from the relief it requested of the Commission. Ford is already a diversified world producer. In the short run, it stands to lose less than GM from any growth of barriers to auto trade around the world, but in the longer run the success of the world car will depend on a world market. It is presently the only domestic producer besides GM attempting to maintain a full competitive line of automobiles. Ford has had to engage in this struggle from a far more limited financial base than GM. As a result it has not had the possibility of making the across-the-board redesign commitments GM made for the last half of the previous decade. Its apparent strategy for the late 1970s was to capture large car share from GM by downsizing more slowly at the upper end of its offerings. The decision made sense if Ford discounted the possiblility of a second oil crisis like the one experienced in 1978. But when the market place changed abruptly in 1979, Ford lacked the flexibility to react quickly to the shift in consumer tastes. Now its adaptation will take time, and the prospects of Ford continuing as a full line domestic auto producer depend on a rapid end to the credit crunch.

Conclusion

The industry is suffering from problems that will continue as long as the credit situation remains tight and recovery is delayed. But this threat of continued injury is not related in any substantial fashion to imports. Import relief may generate a perverse influence on the ability of the United States to attract foreign producers to establish new domestic facilities. It will hurt most if not all U.S. producers' ability to carry out their present expansion plans. And it will not provide jobs of a permanent nature in the industry. Relief directed at one of the symptoms rather than at the

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Footnotes continued from last page

the coming period. The record shows that all investment plans for domestic production are independent of import relief. Furthermore, Ford's present debt/equity ratios as well as those of other producers on whom the Commission obtained information are well within historical ranges.

[198] One of the bottlenecks which prevents any further acceleration of the transformation program is the already overwhelming backlog in the worldwide machine tool industry. *American Machinist* (Feb. 1980) reported a backlog of 16 months in the United States and shorter but growing backlogs for many U.S. trading partners. Orders in the U.S. are at record levels. In a recent Unfair Import Practices case under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), a patent infringement remedy that would have excluded imports of crankpin grinders made by a supplier to Ford was precluded for the first time ever because of the public interest in hastening U.S. production of fuel-efficient autos. One of the Commission's reasons for allowing the imports was that in May 1979 the complainant and its domestic licensee had backlogs of two years. *See* "Opinion of Vice Chairman Alberger and Commissioners Bedell and Stern" in *Certain Automatic Crankpin Grinders, Inv. No. 337-TA-60, USITC Pub. No. 1022 (December 1979) at 18.*

[199] Ford proposed a quota of this level based on 1976 imports.

[200] Our staff study assumes no domestic price increases; any price increases would trade off potential jobs and production for increased profits.

[201] Honda Post-Hearing Brief at 19.

[202] A proper analysis of the state of the domestic industry cannot be made without an understanding of the increasingly complex financial relations between U.S. producers and their foreign counterparts.

Part of the problem facing U.S. auto and truck workers is that U.S. producers have elected to source certain of their models from foreign manufacturers rather than to produce all their models domestically. Unfortunately, it has been these types of models which the U.S. public has increasingly sought during the last two years. The reasons for production decisions include efforts to respond to import competition, gaining on other domestic competitors, efforts to avoid paying higher U.S. wage rates, and efforts to reduce the risks inherent in the introduction and possibly short-lived acceptance of a new model.

All five U.S. manufacturers import automobiles and/or small pickup trucks. Some of the firms import vehicles from their wholly-owned subsidiaries. Some domestic firms import vehicles from a foreign country in which it has partial ownership. And one company imports vehicles from a foreign company in which it holds no financial interest.

General Motors Corp. (GM) currently imports only a small pickup truck, the LUV, from Isuzu Motor Co. (Isuzu) of Japan. GM also imported a small automobile, called the Opel, from Isuzu until mid-1979. Prior to importing the Opel from Isuzu, GM imported a small car (also called Opel) from its West German subsidiary during the 1960s and early 1970s. GM currently owns 34 percent of Isuzu.

Ford imports both an automobile and a small pickup truck. The Ford Fiesta auto is produced by a wholly-owned Ford subsidiary in West Germany, the Courier truck is manufactured by Toyo Kyogo Company, Ltd. (Toyo Kyogo) of Japan. Ford owns 25 percent of Toyo Kyogo. During the last fifteen years, Ford has imported other automobiles from its European subsidiaries, including the Cortina from the United Kingdom and the Capri from West Germany.

Chrysler is currently importing two pickup trucks and two automobiles from Mitsubishi Corporation (Mitsubishi) of Japan. The two pickup trucks (D-50 and Arrow) and the two automobiles (Colt and Arrow/Champ) are distributed by two Chrysler dealership networks (Dodge and Plymouth). Chrysler owns 15 percent of Mitsubishi.

AMC imports and distributes two types of automobiles from Regie Nationale des Usines Renault (Renault) of France. AMC does not own part of Renault; rather, Renault purchased 1.5 million shares of AMC stock in 1979, with an option to purchase up to 52 percent of AMC's stock at any time in the future. As a result of the arrangement with Renault, U.S. producers are now responsible for nearly 75 percent of U.S. car imports from France.

VW of America is considered a domestic producer in this investigation to the extent it produces cars in the United States. However, it is a wholly-owned subsidiary of Volkswagen A. G. (VW) of West Germany. VW of America imports Audis, Dashers, Rabbit convertibles, Vans and Sciroccos from its West German parent, and it also imports Porsche automobiles from Dr. Ing. h.c. F. Porsche A. G. (Porsche) of West Germany, a firm which VW of West Germany is affilitated with, but does not own.

Furthermore, GM, Ford, Chrysler and AMC each operate wholly-owned subsidiaries in Canada whose status with respect to the domestic industry has already been discussed in Section III.

cause of the problems may eliminate the exciting possibility the U.S. industry now has to again become the world's auto leader.[203]

Views of Commissioners George M. Moore and Catherine Bedell

In order to make an affirmative determination in an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251), we must determine that some or all of the articles described in the notice of investigation are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Thus, in order to make such an affirmative determination, the statute requires that we find—

(1) that the subject articles are imported in "increased quantities";

(2) that the sppropriate domestic industry is seriously injured or is threatened with serious injury; and

(3) that the increased imports are a "substantial cause" of the serious injury or threat thereof.

If we find that any one of the above three conditions or criteria is not satisfied, we must make a negative determination.

Determination

In the present investigation we have determined—

(1) that on-the-highway passenger automobiles, provided for in items 692.10 and 692.11 of the Tariff Schedules of the United States (TSUS), *are* being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles; and

(2) that automobile trucks, and bodies (including cabs) and chassis for automobile trucks, provided for in items 692.02, 692.03, 692.20, and 692.21 of the TSUS, are *not* being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Domestic industries. In this investigation, we find that there are two domestic industries producing articles like or directly competitive with the imported articles: a domestic industry producing on-the-highway passenger automobiles and another domestic industry producing automobile trucks. In this and prior cases under section 201 we have generally followed a product-line approach in determining what constitutes the appropriate domestic industry. When the scope of an investigation covered two or more different products and there was domestic production of products "like" the imported articles, we found that there are two or more domestic industries.[204] We believe that passenger automobiles and automobile trucks are basically different products, and, in view of the fact that there is domestic production of what we consider articles "like" both of these products, we conclude that there are two domestic industries.

Our views with respect to each of these two industries are set forth immediately below.

Passenger automobile industry

As stated above, we have determined that on-the-highway passenger automobiles are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing on-the-highway passenger automobiles. We will discuss each of the three elements of this determination immediately below.

Increased imports. Section 201 provides that an article is being imported in "increased quantities" when the increase is "either actual or relative to domestic production" (sec. 201(b)(2)(C)). Imports of passenger automobiles have increased in both actual and relative terms. During 1975–79, imports increased by almost 37 percent, from 2,047,702 units in 1975 to 2,797,063 units in 1979. Imports in the first 6 months of 1980 increased to a level about 13 percent higher than that in the first 6 months of 1979—1,631,767 units compared with 1,437,910 units. The ratio of imports to domestic production increased from 31 percent in 1975 to 33 percent in 1979, and from 30 percent in the first 6 months of 1979 to 47 percent in the corresponding period of 1980. Thus, passenger automobiles are clearly being imported in "increased quantities."

Serious injury. We agree with the Commission majority that the domestic automobile industry is seriously injured. Section 201, while not expresslly defining the term "serious injury," requires that the Commission consider all relevant economic factors, including certain enumerated factors, in determining whether there is serious injury (sec. 201(b)(2)). The Commission is expressly directed to consider whether there is significant idling of productive facilities in the industry, whether a significant number of firms in the industry are unable to operate at a reasonable level of profit, and whether there is significant unemployment or underemployment within the industry.

We have concluded that the information before the Commission clearly shows that the domestic automobile industry is seriously injured. There is significant idling of domestic productive facilities in this industry. Capacity utilization for U.S. automobile producers declined sharply from 86 percent in 1978 to 79 percent in 1979 and to 66 percent in the first 6 months of 1980. Overall domestic production capacity declined at the same time. Ford and Chrysler each permanently closed two plants during the period January 1979–June 1980. General Motors has temporarily closed five plants. But for plant closings by Ford and Chrysler, which reduced capacity accordingly, the capacity utilization ratio would be considerably lower.

Four of the five U.S. automobile producers—all except VW of America—are presently operating at a loss. The aggregate performance of the five producers for the first 6 months of 1980 was a loss of $2.9 billion, compared with a profit of $2.7 billion in the corresponding period of 1979. The industry's net operating margin, which had been 7.5 percent in 1977, fell to 6.2 percent in 1978 and to 1.5 percent in 1979 before falling sharply to a negative 8.4 percent in the first 6 months of 1980, when the full impact of the passenger car imports occurred. Clearly, a significant number of firms in the industry are presently unable to operate at a reasonable level of profit.

Employment in the industry has fallen sharply. U.S. establishments producing automobiles and light trucks employed slightly more than 1 million persons in 1978. Such employment declined to an average of 972,000 persons in 1979, and then fell sharply in the first 6 months of 1980 to 804,000 persons. The number of workers employed by domestic producers declined 20 percent—by 200,000 persons—between 1978 and

[203] If assistance is deemed appropriate, it should be directed directly at improving the financial condition of U.S. producers during the next two critical years. For instance, this might be accomplished by means of changing amortization and depreciation rules. Section 201 does not provide for the Commission to recommend such a remedy. I make this observation only because imports are not the root problem and assistance in the recovery of the domestic industry should therefore be in a form other than import relief.

[204] See, for example, our views or views in which one or both of us have joined in *Bolts, Nuts, and Screws of Iron or Steel: Report to the President on Investigation No. TA–201–2 . . .*, USITC Publication 747, November 1975, p. 28; *Footwear: Report to the President on Investigation No. TA–201–7 . . .*, USITC Publication 758, February 1976, p. 46; and *Certain Fishing Tackle: Report to the President on Investigation No. TA–201–34 . . .*, USITC Publication 917, September 1978, pp. 4–5, 14.

1980. Man-hours worked by production and related workers in these establishments similarly declined, from 1.7 million hours in 1978 to 1.6 million hours in 1979, and from 869,000 hours in the first 6 months of 1979 to 605,000 hours in the first 6 months of 1980. During the latter period, approximately 246,000 workers were certified by the Department of Labor as eligible to receive trade adjustment assistance benefits because imports were found to have contributed importantly to their separation or partial separation, or threat thereof, from their places of employment. Clearly, a significant number of persons in the industry are unemployed or underemployed.

There are other important indications of serious injury to this industry. Shipments of passenger automobiles declined from 8.9 million units in 1977 and 1978 to 8.3 million units in 1979, and from 4.8 million units in the first 6 months of 1979 to a sharply lower 3.4 million units in the first 6 months of 1980. Wages paid to employees are down, from $12.1 billion in the first 6 months of 1979 to $10.0 billion in the first 6 months of 1980, despite higher hourly wage rates.

Substantial cause of serious injury. Section 201(b)(4) of the Trade Act defines the term "substantial cause" to mean "a cause which is important and not less than any other cause." Thus, increased imports, to be a substantial cause of serious injury, must be both an "important" cause of injury and not less important than any other cause. If another single cause is more important, increased imports cannot be a "substantial cause." In addition, section 201(b)(2) directs the Commission, in determining whether increased imports are a substantial cause of injury, to take into account all economic factors which it considers relevant, including (but not limited to) "an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers" (sec. 201(b)(2)(C)).

As discussed above, imports have increased significantly, in both actual and relative terms. More important, however, imports have captured an ever larger share of the domestic passenger automobile market during the last 3 years. The ratio of automobile imports to domestic automobile consumption increased from 25 percent in 1976 and 1977 to 26 percent in 1978 and 27 percent in 1979, and from 25 percent in the first 6 months of 1979 to 34 percent in the first 6 months of 1980.

Section 201(b)(2) does not limit us to consideration of only certain economic factors in determining whether increased imports are a substantial cause of serious injury. We are to take into account "all" relevant economic factors. We believe that there are a number of other individual causes of injury, such as increased costs of passenger automobiles, the shift in consumer preferences from large to small cars, high interest rates, a shortage of consumer credit, increased gasoline prices, shortages of gasoline (in 1979), the failure of domestic corporate management to anticipate current conditions, and costly Government regulations. We find that none of these other causes, even if considered an important cause of injury, are a more important cause of serious injury to the domestic industry than increased imports.

It is clear that our determination differs from the majority in the interpretation given to the provisions in section 201 of the Trade Act relating to the weighing and comparison of the relevant economic factors contributing to the serious injury experienced by the domestic industry. We believe that the law clearly and unequivocally provides that the Commission shall, to the extent practicable, isolate each of the economic factors relevant to the matter of serious injury for the purpose of comparing each of them with the factor of increased imports. If we were to do otherwise—that is, to aggregate the negative economic factors in comparing them with increased imports—there would be few, if any, Commission decisions favorable to a domestic industry in section 201 cases in times of recession or economic downturn.

In this regard, we refer specifically to the prepared statements read by two of our colleagues at the open Commission meeting of November 10, 1980, at the time of the vote on this matter. Commissioner Stern, in voting in the negative, stated "I find the downturn in economic demand due to general economic conditions, recession, credit crunch, rising costs of car ownership and a major unprecedented shift in demand from large to small cars, brought the domestic industry to its present weakened state." Supporting this point of view was Commissioner Calhoun, who, in voting in the negative, said "My analysis reveals that the general decline in purchases of automobiles and light trucks owing to the downturn of the economy has contributed more so than imports to the serious injury suffered by the automobile industry."

We reject the notion that the statute permits the Commission to aggregate a number of economic factors which in combination are to be weighed against increased imports to find the substantial cause of serious injury. Further, we believe that economic downturns represent the concurrence of a number of adverse factors. We do not believe that Congress envisioned that the Commission would consider an economic downturn per se to be a single economic factor in determining injury in section 201 investigations. Instead, we believe that Congress intended the Commission to examine imports and their impact on the domestic industry over the course of the business cycle—during both good and bad years—in order to ascertain whether import penetration is increasing and, if so, whether the increasing penetration is seriously injuring the domestic industry. This is the approach we have followed in past section 201 cases.[205]

In the present case, as the facts show, imports have been increasing their market share, most significantly during the first 6 months of 1980. We believe that the domestic industry today would be in much better condition—losses would not be so massive and plant closings and layoffs not so severe—had imports not increased their share of the market to the extent that they have. Furthermore, the surge in imports and the share of the market held by imports make it likely that the industry will remain in its present state of serious injury for years to come and increase the likelihood that one or more of the major domestic producers and several of the domestic suppliers will not survive. More than 1 million jobs in passenger-automobile-manufacturing plants, in supplier plants, and at car dealerships, are at stake. Further, the health of the domestic passenger automobile industry affects almost every other basic domestic industry, including the industries producing steel, glass, rubber, machine tools, zinc, and a number of other products.

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[205] See, for example, our views or views in which one or both of us joined in *Stainless Steel and Alloy Tool Steel: Report to the President on Investigation No. TA-201-5 . . .*, USITC Publication 756, January 1976, p. 13; *Footwear: Report to the President on Investigation No. TA-201-7 . . .*, USITC Publication 758, February 1976, p. 56; *Television Receivers . . . Report to the President on Investigation No. TA-201-19 . . .*, USITC Publication 808, March 1977, pp. 18-19; *Low Carbon Ferrochromium: Report to the President on Investigation No. TA-201-20 . . .*, USITC Publication 825, July 1977, p. 10; *Cast-Iron Stoves: Report to the President on Investigation No. TA-201-24 . . .*, USITC Publication 826, July 1977, p. 13; and *High Carbon Ferrochromium: Report to the President on Investigation No. TA-201-28 . . .*, USITC Publication 845, December 1977, p. 10.

Truck industry

As stated above, we have determined that automobile trucks, and bodies (including cabs) and chassis for automobile trucks are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing trucks.

Automobile trucks are provided for in TSUS item 692.02, where they are dutiable at the permanent rate of 8.5 percent ad valorem; however, since 1963 they have been dutiable at the rate of 25 percent ad valorem by virtue of a temporary action taken in settlement of the so-called chicken war (TSUS item 945.69). The 25-percent duty does not apply to trucks from Canada, which enter free of duty under TSUS item 692.03. Truck bodies and chassis are provided for in TSUS item 692.20, where they are dutiable at a rate of 4 percent ad valorem (except truck bodies and chassis from Canada, which enter free of duty under TSUS item 692.21). Prior to August 21, 1980, imports of certain trucks without their loadbeds were wrongly classified at U.S. ports of entry. Instead of being classified as they should have been as "trucks, unfinished," dutiable at the rate of 25 percent under TSUS item 945.69, they were wrongly classified as "truck chassis" at the rate of 4 percent ad valorem under TSUS item 692.20. Significant quantities of such unfinished trucks were wrongly admitted as if they were chassis dutiable at 4 percent ad valorem. However, on May 23, 1980, the U.S. Customs Service announced that effective August 21, 1980, and henceforth, such unfinished trucks would be classified as "trucks" under TSUS item 692.02 (item 945.69) and dutiable at 25 percent ad valorem.[306]

Inasmuch as such trucks, including the aforementioned unfinished trucks, are presently dutiable at 25 percent by reason of Customs' having corrected its classification error concerning unfinished trucks, it seems likely that imports of trucks will decline. Therefore, we have concluded that automobile trucks, and bodies (including cabs) and chassis for automobile trucks are not presently being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic truck industry.

[306] The Customs Service published a notice to such effect in the **Federal Register** of May 23, 1980 (45 FR 35057).

Conclusion

This is a classic case for an affirmative determination under section 201 of the Trade Act. All the elements are present. There are increasing imports resulting in dramatic increases in the penetration of the domestic market by imports of on-the-highway passenger automobiles. The domestic industry is suffering almost catastrophic injury to such an extent that, for the first time in history, our Federal Government has found it necessary to guarantee loans for up to $1.5 billion for a major automobile corporation. No other single adverse economic factor has plagued our domestic economy during the past several years which even approaches the disastrous effect caused by imports of passenger automobiles on this domestic industry. Had it not been for increasing imports of passenger automobiles during the past 3 years, the domestic industry would now be well into the process of adjusting to the other, less important adverse economic conditions.

As the legislative history of section 201 suggests, it is not feasible to assign a number on a scale of 1 to 10 to each of the causes of serious injury and thereby discover which is the most important cause. On the other hand, it is consistent with the legislative intent to examine each individual cause to determine which one, if absent, would have had the greatest effect of alleviating the serious injury experienced by the domestic industry. On that basis the most important cause of serious injury to the domestic automobile industry is increasing imports of on-the-highway passenger automobiles.

By reason of the foregoing, we have concluded that on-the-highway passenger automobiles are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic automobile industry, but that automobile trucks and bodies (including cabs) and chassis for automobile trucks are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic truck industry.

We believe that import restriction in the form of reasonable quotas on imports of passenger automobiles would not have caused disruptions in international trade, but would have provided the domestic passenger car industry with a much-needed opportunity to adjust to the new competitive conditions in the marketplace which are the result of economic factors beyond its control.

By order of the Commission.

Issued: December 10, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40173 Filed 12-23-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-89]

Certain Apparatus for the Continuous Production of Copper Rod; Addition of Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Addition of Phelps Dodge Industries, Inc. as a respondent.

SUMMARY: On December 17, 1980, the Commission voted to add Phelps Dodge Industries, Inc. as a respondent in the above-referenced investigation. The Commission also voted to deny motion 89-21 insofar as it requested that Phelps Dodge Corporation be dismissed as a respondent.

SUPPLEMENTARY INFORMATION: This investigation, under Section 337 of the Tariff Act of 1930, was instituted by notice published in the **Federal Register** on August 13, 1980 (45 FR 53923). Southwire Company, of Carrolton, Georgia, is a complainant in this investigation. Krupp GmbH of the Federal Republic of Germany, and Krupp International, Inc. of Harrison, New York, were named respondents. On October 23, 1980, the Commission voted to issue a temporary exclusion order, having found that there is reason to believe that section 337 is being violated, and voted to add Phelps Dodge Corporation as a respondent. On November 7, 1980, the Commission issued an action and order adding Phelps Dodge Corporation as a respondent.

FOR FURTHER INFORMATION CONTACT: Jeffrey Neeley, Esquire, Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0359.

Issued: December 18, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40169 Filed 12-23-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-85]

Certain Slide Fastener Stringers and Machines and Components Thereof for Producing Such Slide Fastener Stringers; Denial of Request for Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Disposition of complainant's request for temporary relief.

SUMMARY: On August 29, 1980, the Commission determined not to issue a temporary exclusion order in the above-captioned investigation. The Commission found that there is no reason to believe that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), and that the complainant would not suffer immediate and substantial harm in the absence of temporary relief. On November 10, 1980, the complainant petitioned the Commission to reconsider its denial of temporary relief in light of the Commission opinion issued in connection with the temporary relief phase of investigation No. 337-TA-89, *Certain Apparatus for the Continuous Production of Copper Rod.* The Commission reaffirmed its vote on November 26, 1980.

SUPPLEMENTARY INFORMATION: This investigation, under section 337 of the Tariff Act of 1930, was instituted by notice published in the **Federal Register** on June 4, 1980 (45 FR 40242). Textron, Inc. is the complainant in this investigation. Y.K.K. (U.S.A.) Inc. and Yoshida Kogyo K.K. were named party respondents.

The Commission's Action and Order, and the Commissioners' opinions issued in connection therewith are available for inspection in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0480.

Issued: December 16, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40171 Filed 12-23-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-93]

Certain Universal Joint Kits, Components Thereof, and Trunnion Seals Used Therewith; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is herby given that a complaint was filed with the U.S. International Trade Commission on November 3, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Dana Corporation, P.O. Box 1000, Toledo, Ohio 43697. The complaint was amended on November 18, 1980. The complaint, as amended (hereinafter referred to as "the complaint"), alleges unfair methods of competition and unfair acts in the importation into the United States of certain universal joint kits with trunnion seals, or in their sale, because of the alleged infringement by such trunnion seals of at least claims 1, 3, 4, 5, and 7 of U.S. Letters Patent 3,479,840 and the alleged misappropriation of Dana Corporation's trade nomenclature. The complaint further alleges that the effect or tendency of such unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation; during the investigation, to issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond; and, after a full investigation, to issue an order permanently excluding the articles in question from entry into the United States.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.12 of the Commission's rules of practice and procedure (19 CFR 210.12).

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on November 26, 1980, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(b)), an investigation be instituted to determine whether there is reason to believe there is a violation and whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain universal joint kits, components thereof, and trunnion seals used therewith into the United States, or in their sale, because of the alleged infringement by such seals of claims 1, 3, 4, 5, or 7 of U.S. Letters Patent 3,479,840 and the alleged misappropriation of Dana Corporation's trade nomenclature, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Dana Corporation, P.O. Box 1000, Toledo, Ohio 43697.

(b) The respondents are the following companies alleged to be engaged in the unlawful importation of such articles into the United States, or in their sale, and are parties upon which the complaint is to be served:

Naniwa Seimitsu Industry Co., Ltd., No. 2-Chome, Kusune-Cho, Yao, Osaka, Japan
GMB Universal Joints, Inc., 22 D. Craigwood Road, Avenel, N.J. 07001
GMB West, 121 Sierra Street, El Segundo, Calif. 90245
Kanematsu-Gosho (U.S.A.) Inc., 543 West Algonquin Road, Arlington Heights, Ill. 60005

(c) Wilhelm A. Zeitler, Chief, Nonpatent Branch, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall name the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

SUPPLEMENTARY INFORMATION: The phrase "components thereof" has been added to paragraph (1) above on the basis of informal investigatory activities by the Commission which revealed that the universal joint kit can be imported as component parts as well as in an assembled kit form.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the

right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is avilable for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0493.

Issued: December 17, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40172 Filed 12-23-80; 8:45am]

BILLING CODE 7020-02-M

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974; Employee Grievance Records

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Maintenance of System of Records: Employee Grievance Records.

SUMMARY: In accordance with 5 U.S.C. 552 (e)(4), NCUA publishes the description of a system of records previously maintained by the Office of Personnel Management but now maintained by NCUA.

EFFECTIVE DATES: The System of Records, Employee Grievance Records, is effective on January 1, 1981.

ADDRESS: National Credit Union Administration, 1776 G Street N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Dorothy Stassun, Attorney-Advisor, Office of General Counsel, at the above address or telephone (202) 357–1030, or Judy Wilfong, Division of Personnel, Office of Administration, at the above address or telephone (202) 357–1158.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 552a(e)(4), the National Credit Union Administration hereby publishes a System of Records entitled "Employee Grievance Records". This system was previously maintained by the Office of Personnel Management under the title "OPM/GOVT–2, Grievance Records". (44 FR 30884 on May 29, 1979 as amended by subsequent publication at 44 FR 61708 on October 26, 1979).

The OPM System of Records is being deleted from OPM's annual republication of records. The system will continue into existence until December 31, 1980; on that date it will become obsolete. NCUA is adopting the System of Records entitled "Employee Grievance Records" with two minor changes. First, those federal employees who have submitted grievances in accordance with "negotiated procedure" are removed from those "categories of individuals" previously covered by the OPM system. Secondly, "files and records of internal grievances and arbitration systems that agencies may establish through negotiations with recognized labor organizations" are deleted from the "categories of records" in the system. Neither of these deletions mandates submittal by this agency of a report on a new system of records. OMB Circular No. A–108, Transmittal Memorandum No. 1, September 30, 1975, requires submittal of such a report when the systems publication changes the number or types of individuals on whom the records are maintained or expands the types or categories of information maintained. NCUA has never provided and does not currently provide for the settlement of personnel matters through these negotiation procedures; therefore, elimination of this non-existent category of employees would not meet the OMB standard for records on individuals. Furthermore, NCUA employees are not represented by any labor organization; the deletion of this category of records would in no way change the categories of records maintained.

Dated: December 18, 1980.

Beatrix Fields,

Acting Secretary, National Credit Union Administration Board.

NCUA–25

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

Division of Personnel, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with NCUA in accordance with Part 771 of the Office of Personnel Management's regulations. (5 CFR Part 771).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees under Part 771 of the OPM's regulations. These case files contain all documents related to the grievance including statements of witnesses, reports of interviews and hearings, examiners findings and recommendations, a copy of the original and final decision and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, E. O. 10577, 3 CFR 1954–1958 Comp., p. 218, E. O. 10987, 3 CFR 1959–1963 Comp., p. 519, agency employees for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used by the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(2) Information is used by any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

(3) Information is used by a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Information is used by a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

(5) Information is used by another Federal agency or by a court when the Government is party to a judicial proceeding before the court.

(6) Information is used by the National Archives and Records Service (General Services Administration) in records management inspections

conducted under authority of 44 U.S.C. 2904 and 2906.

(7) Information is used by NCUA in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

(8) Information is used by officials of the Office of Personnel Management, the Merit Systems Protection Board including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

(9) Information (that is relevant to the subject matter involved in a pending judicial or administrative proceeding) is used to respond to a request for discovery or for appearance of a witness.

(10) Information is used by officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

(11) Standard routine uses as set forth in Appendix A of the National Credit Union Administration Annual Publication of Systems of Records at 45 FR 2778, January 14, 1980.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrievable by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Personnel, NCUA, 1776 "G" Street, N.W. Washington, D.C. 20456.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel office regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed an individual may request access to the official copy of the grievance file by contacting the agency personnel office.

Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individual requesting access must also follow the Privacy Act regulations regarding access to records and verification of identity (12 CFR 720.23 and 12 CFR Part 720 Subpart B).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determine if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the agency personnel office. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting amendment must also follow the Privacy Act regulations regarding amendment to records and verification of identity (12 CFR 720.26 and 12 CFR Part 720 Subpart B).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officials.

d. From related correspondence from organizations or persons.

[FR Doc. 80-40044 Filed 12-23-80; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FP 026-5 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Nuclear Criticality Control and Safety of Homogeneous Plutonium-Uranium Fuel Mixtures Outside Reactors" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to describe procedures acceptable to the NRC staff for complying with the Commission's regulations with regard to the prevention of criticality accidents in operations involving homogeneous plutonium-uranium fuel mixtures outside reactors. The guide endorses ANSI/ANS 8.12-1978, "Nuclear Criticality Control and Safety of Homogeneous Plutonium-Uranium Fuel Mixtures Outside Reactors."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by February 19, 1981.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 15th day of December 1980.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Standards, Office of Standards Development.

[FR Doc. 80-40102 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FP 029-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation (Dry Storage)" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to identify the type of information needed by the NRC staff for its review of the safety analysis report included in an application for a license to store spent fuel in a dry-mode independent spent fuel storage installation and suggest a format for presenting the information. The safety analysis report is required by 10 CFR Part 72, which was published November 12, 1980 (45 FR 74693).

This draft guide and the associated value-impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value-impact statement. Comments on the draft value-impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by February 27, 1981.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 16th day of December 1980.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Standards, Office of Standards Development.

[FR Doc. 80-40101 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 89, 89 and 86 to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, issued to Duke Power Company, which revised the Technical Specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the Station's Common Technical Specifications by providing a redefinition of the term operable and the addition of general Limiting Conditions for Operation.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated June 24, 1980, as supplemented October 14, 1980, (2) Amendments Nos. 89, 89, and 86 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. and at the Oconee County Library, 201 South

Spring Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of December 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

FR Doc. 80-40104 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

Metropolitan Edison Co., et al., Availability of Supplement No. 1 to the Evaluation for TMI-1 Restart

In the matter of Metropolitan Edison Company, Jersey Central Power and Light Company, Pennsylvania Electric Company, notice is hereby given that the Office of Nuclear Reactor Regulation has published Supplement No. 1 to the Evaluation of the Licensee's Compliance with the Short and Long Term Items of Section II of the NRC Order dated August 9, 1979, related to the restart of the Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, Pennsylvania.

This supplement 1) updates Section C, Order Item 6 of NUREG-0680, 2) addresses specific order items included in the Commission's Order of March 6, 1980 and 3) describes the licensee's compliance with the management-related requirements in NUREG-0694.

Based on our review, we conclude that the licensee has made substantial improvements in the area of management capability and resources and is continuing its efforts in this direction. A few items remain unresolved and until those items are acceptably resolved, we cannot yet conclude that the licensee is in complete compliance with Order Item 6.

Any recommendation by the Staff to authorize restart of TMI-1 will be made only after resolution of presently open items, definition of any additional required items, and compliance by the licensee with those additional requirements.

The report is being made available at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555, and at the Government Publications section, State Library of Pennsylvania, Box 1601 (Education Building), Harrisburg, Pennsylvania, for public inspection and copying. The report (Document No. NUREG-0680 Supplement No. 1) can also be purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 28th day of November 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating, Reactors Branch No. 4, Division of Licensing.

[FR Doc. 80-40100 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-184]

National Bureau of Standards; Consideration of Application for License Renewal at Increased Power Level

The United States Nuclear Regulatory Commission (the Commission) is considering amendment and renewal of Facility License No. TR-5, issued to the National Bureau of Standards (the licensee), for operation of the tank-type test reactor located near Gaithersburg on the National Bureau of Standards site in Montgomery County, Maryland.

The amendment and renewal would authorize an increase in the reactor's maximum power level from 10 megawatts (thermal) to 20 megawatts (thermal), in accordance with the licensee's application dated December 2, 1980 and letter dated December 11, 1980. The license would be valid for a period of 20 years from the date of issuance.

Prior to a decision to amend and renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission regulations.

By January 23, 1981, the licensee may file a request for a hearing with respect to amendment and renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identity the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity.

Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner

promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri) (800) 324-6700. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James R. Miller: (petitioner's name and telephone number); (date petition was mailed); (National Bureau of Standards) and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Wshington, D.C. 20555, and to Mr. Robert S. Carter, Reactor Radiation Division, National Bureau of Standards, Washington, D.C. 20234.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment and renewal dated December 2, 1980 and letter dated December 11, 1980, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555.

Dated at Bethesda, Maryland this 18th day of December 1980.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 80-40099 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-500-CP and 50-501-CP]

The Toledo Edison Company; Davis-Besse Nuclear Power Station, Units 2 and 3, Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for *The Toledo Edison Company, et al.* (Davis-Besse Nuclear Power Station Units 2 and 3), Docket Nos. 50-500-CP and 50-501-CP, is hereby reconstituted by appointing Administrative Judge B. Paul Cotter, Jr., Chairman of the Board. This reconstitution is necessitated by the unavailability of the prior Chairman, Edward Luton, who is no longer a member of the Atomic Safety and Licensing Board Panel.

As reconstituted, the Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr., Chairman, Dr. Cadet H. Hand, Jr., Dr. David L. Hetrick.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Chairman of the Board is United States Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, Washington, D.C. 20555.

Issued at Bethesda, Maryland, on December 16, 1980.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 80-40103 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[CLI-80-42]

Statement of Policy; Further Commission Guidance for Power Reactor Operating Licenses

Memorandum and Order

Recently the Commission, by a vote of 3–2, issued a Statement of Policy entitled "Further Commission Guidance for Power Reactor Operating Licenses." 45 FR 41738 (June 20, 1980). In essence, the Statement of Policy announced the intent of the Commission that in future actions on nuclear power reactor operating license applications, it would look to the list of "Requirements for New Operating Licenses" found in NUREG–0694 (June 1980) as setting forth requirements for new operating licenses which should be "necessary and sufficient for responding" to the accident at Three Mile Island ("TMI"). Consequently, current operating license applications were to be judged against present NRC regulations, as supplemented by these TMI-related requirements. Insofar as certain of the provisions of NUREG–0694 sought to impose operating license requirements beyond those necessary to show compliance with the regulations:

> Although the [licensing and appeal] boards may entertain contentions asserting that the supplementation is unnecessary (in full or in part) and they may entertain contentions that one or more of the supplementary requirements are not being complied with; they may not entertain contentions asserting that additional supplementation is required. *Id.*

On November 3, 1980, by a vote of 2–2, the Commission denied a request for a stay of the Statement of Policy filed by the Union of Concerned Scientists and the Shoreham Opponents Coalition.

On October 28, 1980, by a vote of 4–0, the Commission approved NUREG–0737, "Clarification of TMI Action Plan Requirements," which is a letter from D. G. Eisenhut, Director of the Division of Licensing, NRR, to licenses of operating power reactors and applicants for operating licenses forwarding post-TMI requirements. NUREG–0737 now supersedes NUREG–0694, the latter being the document which forms the core of the substantive requirements in the aforementioned Statement of Policy. NUREG–0737 makes numerous significant changes in NUREG–0694. In some instances, the requirements in NUREG–0694 are made more flexible, especially as to implementation schedules. In some instances, the requirements in NUREG–0694 are made more strict. In addition, NUREG–0737 adds new requirements, taken from previously issued Bulletins and Orders, which were not part of NUREG–0694.

The Commission's approval of NUREG–0737 requires that some changes be made in the previously adopted Statement of Policy. Moreover, the Commission has now had more time to reflect upon the distinction between interpretive and supplementary requirements, as originally set forth in NUREG–0694 and as modified in NUREG–0737, and believes that the number of supplementary requirements may be quite small. For these reasons, the Commission has decided that the Statement of Policy should be amended as set forth in the Appendix to this Memorandum and Order.[1]

It is so ordered.

Dated at Washington, D.C., this 18th day of December 1980.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

U.S. Nuclear Regulatory Commission—Further Commission Guidance For Power Reactor Operating Licenses—Revised Statement of Policy*

I. Background

After the March 1979 accident at Three Mile Island, Unit 2, the Commission directed its technical review resources to assuring the safety of operating power reactors rather than to the issuance of new licenses. Futhermore, the Commission decided

[1] Chairman Ahearne concurs in amending the policy statement, but disagrees in how it should be amended. His dissenting views are attached to the Appendix.

*All footnotes for this Statement of policy appear at end of text.

that power reactor licensing should not continue until the assessment of the TMI accident had been substantially completed and comprehensive improvements in both the operation and regulation of nuclear power plants had been set in motion.

At a meeting on May 30, 1979, the Nuclear Regulatory Commission decided to issue policy guidance addressing general principles for reaching licensing decisions and to provide specific guidance for near-term operating license cases.[1] In November 1979, the Nuclear Regulatory Commission issued the policy guidance in the form of and amendment to 10 CFR Part 2 of its regulations,[2] describing the approach to be taken by the Commision regarding licensing of power reactor. In particular, the Commission noted that it would "be providing case-by-case guidance on changes in regulatory policies." The Commission has now acted on four operating licenses, has given extensive consideration to issues arising as a result of the Three Mile Island accident, and is able to provide general guidance.

Following the accident at Three Mile Island 2, the President established a Commission to make recommendations regarding changes necessary to improve nuclear safety. In May 1979, the Nuclear Regulatory Commission established a Lessons Learned Task Force,[3] to determine what actions were required for new operating licenses and chartered a Special Inquiry Group to examine all facets of the accident and its causes. These groups have published their reports.[4]

The Lessons Learned Task Force led to NUREG–0578, "TMI–2 Lessons Learned Task Force Status Report and Short-Term Recommendations" and NUREG–0585, "TMI–2 Lessons Learned Task Force Final Report." The Commission addressed these reports in meetings on September 6, September 14, October 14, and October 16, 1979. Following release of the report of the Presidential Commission the Commission provided a preliminary set of responses to the recommendations in that report.[5] This response provided broad policy directions for development of an NRC Action Plan, work on which was begun in November 1979. During the development of the Action Plan, the Special Inquiry Group Report was received, which had the benefit of review by panels of outside consultants representing a cross section of technical and public views. This report provided additional recommendations.

The Action Plan [6] was developed to provide a comprehensive and integrated plan for the actions judged appropriate by the Nuclear Regulatory Commission to correct or improve the regulation and operation of nuclear facilities based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. In developing the Action Plan, the various recommendations and possible actions of all the principal investigations were assessed and either rejected, adopted or modified. A detailed summary of the development and review process for the Action Plan was initially provided in NUREG–0694,[7] "TMI-Related Requirements For New Operating Licenses," and can now be found, as changed, in NUREG–0737, "Clarification of TMI Action Plan Requirements."[8]

Actions to improve the safety of nuclear power plants now operating were judged to be necessary immediately after the accident and could not be delayed until the Action Plan was developed, although they were subsequently included in the Action Plan. Such actions came from the Bulletins and Orders issued immediately after the accident, the first report of the Lessons-Learned Task Force issued in July 1979, the recommendations of the Emergency Preparedness Task Force, and the NRC staff and Commission. Before these immediate actions were applied to operating plants, they were approved by the Commission. Many of the required immediate actions have already been taken by licensees and most are scheduled to be completed in the near future.

On February 7, 1980, based on its review of initial drafts of the Action Plan, the Commission approved a listing of near-term operating license (NTOL) requirements, as being necessary but not necessarily sufficient TMI-related requirements, for granting new operating licenses. Since then, the fuel load requirements on the NTOL list have been used by the Commission in granting operating licenses, with limited authorizations for fuel loading and low power testing, for Sequoyah, North Anna, Salem, and Farley. Full operating licenses were granted, based on the NTOL list, for Sequoyah and North Anna.

On May 15, 1980, after review of the last version of the Action Plan, the Commission approved a list of "Requirements For New Operating Licenses," contained in NUREG–0694, which the staff recommended for imposition on current operating license applicants. That list was recast from the previous NTOL list and sets forth four types of TMI-related requirements and actions for new operating licenses: (1) Those required to be completed by a license applicant prior to receiving a fuel-loading and low-power testing license, (2) those required to be completed by a license applicant to operate at appreciable power levels up to full power, (3) those the NRC will take prior to issuing a fuel-loading and low-power testing or full-power operating license, and (4) those required to be completed by a license prior to a specified date. The Commission also approved the staff's recommendation that the remaining items from the TMI reviews should be implemented or considered over time to further enhance safety.

On October 28, 1980, the Commission approved a "Clarification of TMI Action Plan Requirements," not contained in NUREG–0737, which supersedes NUREG–0694. More explicit requirements, revisions in previous requirements, different time schedules for implementation, and new requirements in NUREG–0694, but taken from previously issued Commission bulletins and orders, form the core of NUREG–0737.

In approving the schedules for developing and implementing changes in requirements, the Commission's primary considerations were the safety significance of the issues and the immediacy of the need for corrective actions. As discussed above, many actions were taken to improve safety immediately or soon after the accident. These actions were generally considered to be interim improvements. In scheduling the remaining improvements, the availability of both NRC and industry resources was considered, as well as the safety significance of the actions. Thus, the Action Plan approved by the Commission presents a sequence of actions that will result in a gradually increasing improvement in safety as individual actions are completed and the initial immediate actions are replaced or supplemented by longer term improvements.

II. Commission Decision

Based upon its extensive review and consideration of the issues arising as a result of the Three Mile Island accident—a review that is still continuing—the Commission has concluded that the list of TMI-related requirements for new operating licenses found in NUREG–0737 can provide a basis for responding to the TMI–2 accident. The Commission has decided that current operating license applications should be measured by the NRC staff against the regulations, as augmented by these requirements.[9] In general, the remaining items of the Action Plan should be addressed through the normal process for

development and adoption of new requirements rather than through immediate imposition on pending applications.

III. Litigation of TMI–2 Issued in Operating License Proceedings

In the November 1979 policy statement, the Commission provided the following guidance for the conduct of adjudicatory proceedings:

> In reaching their decision, the Boards should interpret existing regulations and regulatory policies with due consideration to the implications for those regulations and policies of the Three Mile Island Accident. In this regard, it should be understood that as a result of analyes still underway, the Commission may change its present regulations and regulatory policies in important aspects and thus compliance with existing regulations may turn out to no longer warrant approval of a license application.

The Commission is now able to give the Boards more guidance.

The Commission believes the TMI-related operating license requirements list as derived from the process described above should be the principal basis for consideration of TMI-related issues in the adjudicatory process. There are good reasons for this. First, this represents a major effort by the staff and Commissioners to address more than one hundred issues and recommendations in a coherent and coordinated fashion. This entire process cannot be reproduced in individual proceedings. Second, the NRC does not have the resources to litigate the entire Action Plan in each proceeding. Third, many of the decisions involve policy more than factual or legal decisions. Most of these are more appropriately addressed by the Commission itself on a generic basis than by an individual licensing board in a particular case. Consequently, the Commission has chosen to adopt the following policy regarding litigation of TMI-related issues in operating license proceedings.

The "Clarification of Action Plan Requirements" in NURGE–0737, like the TMI-related "Requirements For New Operating Licenses" in NURGE–0694, can, in terms of their relationship to existing Commission regulations, be put in two categories: (1) Those that interpret, refine or quantify the general language of existing regulations, and (2) those that supplement the existing regulations by imposing requirements in addition to specific ones already contained therein. Insofar as the first category—refinement of existing regulations—is concerned, the parties may challenge the new requirements as unnecessary on the one hand or insufficient on the other within the limits of the regulations.

Insofar as the second category—supplementation of existing regulations—is concerned, the parties may challenge either the necessity for or sufficiency of such requirements. It would be useful if the parties in taking a position on such requirements stated (a) the nexus of the issue to the TMI–2 accident, (b) the significance of the issue, and, (c) any differences between their positions and the rationale underlying the Commission consideration of additional TMI-related requirements. It would be helpful if any certifications of questions regarding such positions to the Commission included the same information and such certifications are encouraged where Boards are in doubt as to the Commission's intentions in approving NUREG–0737. The Atomic Safety and Licensing and Appeal Boards' present authority to raise issues *sua sponte* under 10 CFR 2.760a extends to both categories.

In order to focus litigation of TMI-related issues, the staff and the Boards should use the Commission's existing summary disposition procedures, where applicable, in responding to TMI-related contentions.

The Commission believes that where the time for filing contentions has expired in a given case, no new TMI-related contentions should be accepted absent a showing of good cause and balancing of the factors in 10 CFR 2.714(A)(1). The Commission expects adherence to its regulations in this regard.

Also, present standards governing the reopening of hearing records to consider new evidence on TMI-related issues should be adhered to. Thus, for example, where initial decisions have been issued, the record should not be reopened to take evidence on some TMI-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision.

Finally, the Commission will continue to monitor developments with regard to the litigation of our Action Plan requirements and will continue to offer guidance where appropriate.

Dated at Washington, D.C., the 18th day of December 1980.

Samuel J. Chilk,

Secretary of the Commission.

Footnotes

[1] "Staff Requirements—Discussion of Options Regarding Deferral of Licenses," memorandum from Samuel J. Chilk, Secretary to Lee V. Gossick, Executive Director for Operations, May 31, 1979.

[2] "Suspension of 10 CFR 2.764 and Statement of Policy on Conduct of Adjudicatory Proceedings," 44 FR 65050 (November 9, 1979).

[3] "Lessons Learned from TMI–2 Accident," Roger Mattson to NRR staff, May 31, 1979.

[4] Report of the President's Commission on The Accident at Three Mile Island, "The Need for Change: The Legacy of TMI," October 1979;

U.S. Nuclear Regulatory Commission, "TMI–2 Lessons Learned Task Force Status Report and Short-Term Recommendations," NUREG–0578, July 1979;

U.S. Nuclear Regulatory Commission, "TMI–2 Lessons Learned Task Force Status Report," NUREG–0585, August 1979;

U.S. Nuclear Regulatory Commission Special Inquiry Group, "Three Mile Island: A Report to the Commissioners and to the Public," January 1980.

[5] U.S. Nuclear Regulatory Commission, "NRC Views and Analysis of the Recommendations of the President's Commission on the Accident at Three Mile Island," NUREG–0632, November 1979.

[6] U.S. Nuclear Regulatory Commission, "NRC Action Plans Developed as a Result of the TMI–2 Accident," NUREG–0660.

[7] U.S. Nuclear Regulatory Commission, "TMI-Related Requirements for New Operating Licenses," NUREG–0694, June 1980.

[8] U.S. Nuclear Regulatory Commission, "Clarification of TMI Action Plan Requirements," NUREG–0737, November 1980.

[9] Consideration of applications for an operating license should include the entire list of requirements unless an applicant specifically requests an operating license with limited authorization (e.g., fuel loading and low-power testing).

Chairman Ahearne's Dissenting Views

I now support amending the guidance for litigating TMI–2 issues for the reasons mentioned in the Commission order and below. However, I do not support the Commission's revised statement of policy. Little guidance is provided to either the Board or the parties—they are simply told they can litigate whatever they wish and it would be "useful" or "helpful" to address certain questions.

Throughout the development of the TMI Action Plan and the various policy statements, I have believed the Commissioners should play a central role in determining the appropriate response to the TMI–2 accident. Unfortunately the "Revised Statement of Policy" relinquishes Commission control and attention from a major portion of this process. Therefore I would have preferred the following approach:

Revised Statement of Policy

I. Background

In June 1980 the Commission issued a Statement of Policy dealing with TMI-related requirements for new operating licenses.[1] This statement outlined the process by which the Commission evaluated the TMI–2 accident and then agreed to a list of requirements to be

[1] "Further Commission Guidance for Power Reactor Operating Licenses; Statement of Policy," 45 FR 41738 (June 20, 1980).

adopted in response to the accident.[2] It then provided guidance for litigation of TMI–2 issues in operating license proceedings.

Subsequently substantial controversy developed over the statement—particularly over treatment of requirements and issues which go beyond existing regulations. Due in part to this controversy, in part to a change in the composition of the Commission, in part to the uncertain results of ongoing litigation, and in part to confusion created by subsequent Commission statements, the Commission has decided to modify this aspect of the policy statement. In the long run the Commission believes it will save time by modifying its guidance at this juncture.

II. Modified Commission Guidance of Litigation on TMI–2 Issues in Operating License Proceedings

In the June Statement of Policy the Commission described the TMI-related requirements as falling into two categories: "(1) Those that interpret, refine or quantify the general language of existing regulations, and (2) those that supplement the existing regulations by imposing requirements in addition to specific ones already contained therein." The Commission is modifying its guidance with respect to the second category. Rather than entirely precluding litigation of requirements that go beyond the regulations (other than those found in the Commission's list of requirements), the Commission will now provide parties an opportunity to certify such questions to the Commission. To the extent that an issue addresses items within the current regulations, certification is unnecessary since litigation was permissible under the original policy statement. However issues which raise matters going beyond the existing regulations may now be certified directly to the Commission.[3]

A request for certification should clearly present (a) the nexus of the issue to the TMI–2 accident (i.e., in what way does the TMI accident provide a basis for the concerns presented), (b) the significance of the issue (i.e., what is the consequence of not addressing the issue), (c) to the extent possible, the differences in rationale underlying the certification from the rationale underlying the Commission consideration of additional TMI-related requirements (e.g., different reasoning, incorrect assumptions, incomplete information).

To the extent that a contention raises the need for a requirement already included in the Commission's list of requirements for new operating licenses, certification is necessary. As under the old policy statement, litigation of the need for those requirements is permitted without further action by the Commission. The Commission itself has already found sufficient basis for allowing consideration of those items.

It should be emphasized that this policy statement (as well as the previous policy statement) is intended to address issues arising from the TMI–2 accident. Other issues are to be treated according to normal Commission procedures.[4]

[FR Doc. 80-40105 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[2] "TMI-Related Requirements for New Operating Licenses," NUREG–0694 (June 1980) as modified by "Clarification of TMI Action Plan Requirements," NUREG–0737 (Nov. 1980).

[3] The Licensing Board should certify any such questions directly to the Commission. In the event that a party wishes to request directed certification, the Board should be given a reasonable opportunity to address the certification question prior to Commission action since (a) the Board might rule that the issue is within the existing regulations rendering certification unnecessary and (b) otherwise it would be helpful to have the benefit of the Board's reasoning. *See Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Unit 1), ALAB-297, 7 NRC 727 (1975).

[4] *See e.g.*, 10 CFR 2.758.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Application of Certain International Agreements

This notice modifies the determination published in the **Federal Register** of January 4, 1980 (45 FR 1181), as amended, to reflect additional signatories to the international agreements negotiated in the Tokyo Round of Multilateral Trade Negotiations, and to make determinations necessary for acceptance of the customs valuation agreement.

The determinations herein are made pursuant to the functions of the President under section 2(b) of the Trade Agreements Act of 1979 ("the Act") and section 701(b) of the Tariff Act of 1930, as amended by section 101 of the Act, delegated to the United States Trade Representative by section 1–103 of Executve Order No. 12188 of January 2, 1980.

Now, therefore, I, Reubin O'D. Askew, United States Trade Representative, in conformity with the provisions of section 2 of the Act (93 Stat. 147), section 701 of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151), and section 1–103 Executive Order No. 12188, do determine, effective on the date of signature of this Notice, that:

1. With respect to the Agreements on Technical Barriers to Trade, the following additional countries have accepted the Agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement:

Korea, Republic of; Romania

2. With respect to the International Dairy Arrangement, Romania has accepted the Agreement and should not otherwise be denied the benefits of the Agreement.

3. With respect to the Arrangement Regarding Bovine Meat, Tunisia has accepted the Agreement and should not otherwise be denied the benefits of the Agreement.

4. With respect to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and to Protocol to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade,

(a) in accordance with section 2(b) (1) and (3) of the Trade Agreements Act of 1979, 19 U.S.C. 2503, and the Act to approve and implement the protocol to the trade agreement relating to customs valuation and for other purposes, Pub. L. 96–490, each major industrialized country (as defined in section 126(d) of the Trade Act of 1974, 19 U.S.C. 2136(d)) is also accepting the agreement, without reservation, with the exception of Canada;

(b) in accordance with section 2(b)(3) of the Act, the acceptance of these agreements without reservation by Canada is not essential to the effective operation of the Agreements for that period of time subject to the reservation by Canada; and

(c) in accordance with section 2(b)(3)(C) of the Act, a significant portion of United States trade will benefit from these agreements, notwithstanding the delay in full application of the agreements by Canada, and it is in the national interest of the United States to accept these agreements.

Reubin O'D. Askew,

United States Trade Representative.

[FR Doc. 80-40106 Filed 12-23-80; 8:45 am]

BILLING CODE 3190-01-M

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Meeting

The Select Commission on Immigration and Refugee Policy will hold its seventh meeting on:

Date: January 6, (Tuesday)
Place: Rayburn House Office Building, Room 2141
Time: 3:00 p.m.—6:30 p.m.

Included on the agend will be discussion of major policy issues before the Commission. Written statements may be filed with the Commission before or after the meeting.

The Select Commission on Immigration and Refugee Policy was created by Pub. L. 95–412, signed October 5, 1978. The Commission is charged with a comprehensive review of U.S. immigration laws, policies, and procedures. Membership on the Commission includes four Cabinet members, for members of the House Committee on the Judiciary, four members of the Senate Judiciary Committee, and four members appointed by the President, including Reverend Theodore M. Hesburgh, President of Notre Dame University, and Chairman of the Select Commission.

Address inquiries to: Select Commission on Immigration and Refugee Policy, New Executive Office Building, Room 2020, 726 Jackson Place NW., Washington, D.C. 20506, Telephone: (202) 395–5615.

Lawrence H. Fuchs,

Executive Director.

[FR Doc. 80–40138 Filed 12–23–80; 8:45 am]

BILLING CODE 6820–AR–M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 02/02–5424]

Far East Capital Corp., Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Far East Capital Corporation (Applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1980).

The officers, directors and stockholders of the Applicant are as follows:

Albert D. F. Chang, 3 Oakwood Drive, New Providence, New Jersey, 07974. Director, President, and Sole Stockholder.

Jiann J. Houng, 40–65 62nd Street, Woodside, New York, 11377. Director, Treasurer, and Secretary.

Robert T. Chang, 36 Riceman Road, Berkely Heights, New Jersey, 07922. Director.

The Applicant, a New York corporation, with its principal place of business at 53 Park Place, Suite 206, New York, New York 10007, will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of 5,000 shares of common stock to Albert D. F. Chang.

The Applicant will conduct its activities principally in the State of New York. Applicant intends to provide assistance to qualified socially or economically disadvantaged small business concerns.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: December 17, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80–40188 Filed 12–23–80; 8:45 am]

BILLING CODE 8025–01–M

Merrill Lynch SBL, Inc.; Filing of Application for Eligibility Determination as a Small Business Lending Company.

An application for Eligibility Determination as a Small Business Lending Company has been filed by Merrill Lynch SBL, Inc. (Applicant), One Liberty Plaza, 165 Broadway, New York, New York 10080, with the Small Business Administration pursuant to § 120.4(b) of SBA Regulations (13 CFR 120.4(b)(1980)), promulgated under the Small Business Act.

As a Small Business Lending Company (SBLC), under Subsection (b) mentioned above, the Applicant will be engaged solely in the making of loans to small business concerns, in participation with SBA, and in accordance with applicable SBA Regulations; and, it will be subject to supervison and examination by the SBA.

The Applicant is incorporated under the laws of the State of Delaware and will commence operations with an initial capitalization of $500,000. It intends to conduct its operations on a nationwide basis and to sell, in the Secondary Market, the SBA's guaranteed portions of loans made to small business concerns.

The Officers and Directors of the Applicants are:

Name and Title

Gordon R. Watson, 350 Heights Road, Ridgewood, New Jersey 07450, President and Director.

Joseph M. Leone, 2715 Kennedy Boulevard, Jersey City, New Jersey 07306, Executive Vice President.

Frank M. Macioce, 2 Edgewood Road, Chatham, New Jersey 07928, Secretary.

Edmond N. Moriarty, Jr., 31 Forest Drive, Short Hills, New Jersey 07078, Director.

Wallace O. Sellers, 401 Heights Road, Ridgewood, New Jersey 07450, Director.

Other executives have not yet been named.

Merrill Lynch Capital Resources, Inc., One Liberty Plaza, 165 Broadway, New York, New York 10080, is the parent of the applicant. Merrill Lynch Capital Resources, Inc., is a subsidiary of Merrill Lynch and Company, Inc.

Matters involved in SBA's consideration of the application include the general business reputation and character of management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Act and the Regulations promulgated thereunder.

Notice is hereby given that all interested parties may, not later than 15 days from the date of publication of this Notice, submit to SBA written comments on the proposed Applicant and/or its management. Any such communication should be addressed to: Wayne S.

Foren, Director, Office of Lender Relations & Certification, Small Business Administration, 1441 L Street, NW. Washington, DC 20416.

A copy of this notice shall be published in the *New York Times*, as well as in the four (4) regional editions of the *Wall Street Journal*.

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

Dated: December 18, 1980.

A. Vernon Weaver,

Administrator,

[FR Doc. 80-40186 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 09/09-0274]

Pan American Investment Co. License to Operate

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102(1980)), by Pan American Investment Company, a limited Partnership, 350 California Street, Suite 2090, San Francisco, California 94104 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et. seq.).

The proposed Corporate General Partner, Limited Partner and Investment Manager.

General Partner

Pan American Capital Corporation
350 California Street, Suite 2090
San Francisco, California 94104.

Limited Partner

CIN Industrial Investments Limited
10 Bouverie Street
London EC4y 8BA.

Investment Manager

The Merchants Group Limited
350 California Street, Suite 2090
San Francisco, California 94104.

Pan American Investment Corporation owns 1 percent of Pan American Investment Company outright and an additional 19 percent on a contingent basis. That is to say, after a return of 133 percent of the limited partners capital investment, Pan American Investment Corporation will then participate in the additional 19 percent of the proceeds.

Pan American Capital Corporation is a wholly owned subsidiary of Churchill Associates Limited (CAL), an investment company, and a California corporation. CAL also owns 100 percent of The Merchants Group Limited (TMG), a California corporation, which currently manages another SBIC, Oceanic Capital Corporation (OCC). CAL and OCC are located at the same address as the Applicant. TMG and the General Partner.

The officers, directors and ten or more percent stockholders of CAL are:

Name and address, title, and percent of ownership

Louis L. Davis, 145 Laurel Street, San Francisco, California 94118, Chairman & Chief Executive Officer, 17.85.

Spencer W. Hoopes, 3701 Clay Street, San Francisco, California 94118, Vice President, 17.85.

Robert Cyril Weeks, 4075 Scripps Avenue, Palo Alto, California 94306, Vice President, 17.85

Messers. Davis, Hoopes and Weeks are also the officers and directors of the General Partner and TMG.

The Applicant was established pursuant to a privately negotiated transaction between CAL, Pan American Captial Corporation and The National Coal Board Staff Superannuation Pension Scheme (the Staff Plan) and (the Mineworkers' Plan) (collectively the "Pension Schemes") of the United Kingdom. Pursuant to the terms of the negotiations, the Pension Schemes are utilizing a nominee corporation, CIN Industrial Investments limited, a United Kingdom corporation, as limited partner of the Applicant.

Applicant intends to follow a diversified investment policy with emphasis on "venture capital" investments in "small business concerns" as those terms are defined in Sectioin 107.3 of the Regulations. The initial partnership capital will be $4,824,484.

Matters involved in SBA's consideration of the application includes (1) the general business reputation and character of the proposed owners and management, (2) the reasonable prospects for successful operation of the new SBIC under such management (including adequate profitability and financial soundness, in accordance with the Act and Regulations), and (3) whether the proposed licensing would be in the furtherance of the purpose of the Act.

Notice is hereby given that any person may not later than January 8, 1981 submit written comments to the Associate Administrator for Investment, 1441 L Street, NW, Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in San Francisco, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 17, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-40191 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5396]

Pierre Funding Corp.; Application for a License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), under the name of Pierre Funding Corporation (Applicant), for a license to operate as a Small Business Investment Company (SBIC) under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended, and the Rules and Regulations promulgated thereunder.

The Applicant was incorporated under the laws of the State of New York, and it will commence operations with a capitalization of $604,500.

The Applicant will have its place of business at 270 Madison Avenue, Suite 1608, New York, New York 10017, and it intends to conduct operations primarily in the State of New York.

The officers, directors and stockholders of the Applicant will be:

(1) Elias Henry Debbas, 300 East 40th Street, New York, New York 10017, President, Director, 58.334% Stockholder.

Albert David Sutton, 18 Jerome Avenue, Deal, New Jersey 07723, Vice President, Director, 33.333% Stockholder.

(2) Phillip Gordon Kass, 12 Parkfield Road, Scarsdale, New York 10583, Secretary, Director, 8.333% Stockholder.

Two (2) corporations are contemplated as the shareholders of the Applicant. They are as follows:

(1) All State Credit Corp., (will own 58.334% of applicant); Mr. Debbas is the 100% beneficial owner of All State Credit Corp.

(2) EOI Services, Inc. (will own 8.333% of applicant); Mr. Kass is a 37% beneficial owner of EOI Services, inc.

The Applicant will conduct its activities primarily in the County and City of New York and will primarily finance concerns considered mini-fleet taxicab corporations licensed by the New York Taxi and Limousine Commission.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Finance and 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 New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 17, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-40184 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1963]

Massachusetts; Declaration of Disaster Loan Area

The area of 76–90 North Street complex (Dunham Mall), in the Town of Pittsfield, Berkshire County, Massachusetts constitute a disaster area because of damage resulting from the fire which occurred on November 16, 1980 and November 17, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on Feb. 19, 1981, and for economic injury until the close of business on Sept. 21, 1981, at: Small Business Administration, District Office, 150 Causeway Street, 10th Floor, Boston, Massachusetts 02114, or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008.)

Dated: December 19, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-40189 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1961]

New York; Declaration of Disaster Loan Area

The area of 1229, 1231, 1233, 1235 and 1237 Yonkers Avenue and 437, 439 and 441 Bronx River Road, in the City of Yonkers, Westchester County, New York, constitutes a disaster area because of damage resulting from a fire which occurred on October 28, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on Feb. 19, 1981, and for economic injury until the close of businesss on Sept. 21, 1981, at: Small Business Administration, District Office, 26 Federal Plaza—Room 3100, New York, New York 10007, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 19, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-40192 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1962]

New York; Declaration of Disaster Loan Area

The areas of 89–02 and 89–30 on 37 Avenue, between 37–01 and 37–09 on 89th Street and between 37–02 and 37–10 on 90th Street, in Jackson Heights, in the City of New York, Queens County, New York, constitutes a disaster area because of damage resulting from a fire which occurred on November 11, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on February 19, 1981, and for economic injury until the close of business on Sept. 19, 1981, at: Small Business Administration, District Office, 26 Federal Plaza—Room 3100, New York, New York 10007, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 19, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-40187 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1900; Amendment No. 3]

Texas; Declaration of Disaster Loan Area

The above numbered Declaration and subsequent amendments (See 45 FR 56489, 62599, 79216) is amended further by including the following language as reason for the disaster declaration: "77 counties and adjacent counties in the State of Texas constitute a disaster area because of drought and extreme heat causing damage to agriculture, livestock and products. * * *" All other information remains the same, i.e., the termination date for filing applications for physical damage is close of business on February 12, 1981, and for filing applications for economic injury is close of business on May 12, 1981.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 7, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-40185 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1904; Amendment No. 3]

West Virginia; Declaration of Disaster Loan Area

The above numbered Declaration (See 45 FR 58458), amendment No. 1 (See 45 FR 62600), and amendment No. 2 (See 45 FR 72916) are amended by extending the filing dates for physical damage until the close of business on November 16, 1980, and for economic injury until the close of business on June 14, 1981.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 10, 1980.

Harold A. Theiste,

Acting Administrator.

[FR Doc. 80-40190 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Washington, D.C., will hold a public meeting at 12:00 noon, on Wednesday, January 14, 1981, at the Flagship Restaurant, 900 Water Street, SW, Washington, D.C., to discuss such business as may be presented by

members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Freddie Collins, District Director, U.S. Small Business Administration, 1030 15th Street, NW—Suite 250, Washington, D.C. 20417, (202) 653–6965. There will be a set luncheon price of $7.50, per person.

Dated: December 18, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80–40193 Filed 12–23–80; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, California, will hold a public meeting at 10 a.m., Wednesday, January 14, 1981, at the World Trade Center, 350 South Figueroa, Suite 600, Los Angeles, California, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Rudolph I. Estrada, District Director, U.S. Small Business Administration, 350 S. Figueroa, Suite 600, Los Angeles, California 90071, phone (213) 688–2977.

Dated: December 17, 1980.

Michael B. Kraft,

Director, Office of Advisory Councils.

[FR Doc. 80–40183 Filed 12–23–80; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 80–305]

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Mr. C. J. Thibodeaux, 2105, North Palm Court, Pasadena, Texas 77502, to gauge imported petroleum and petroleum products in the Customs districts of Houston and Galveston, Texas in accordance with the provisions of § 151.43 of the Customs Regulations is approved.

Dated: December 17, 1980.

A. Piazza,

Director, Entry Procedures and Penalties Division.

[FR Doc. 80–40156 Filed 12–23–80; 8:45 am]

BILLING CODE 4810–22–M

[T.D. 80–304]

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Johnnie Wilson Inspections, P.O. Box 924, Freeport, Texas 77541, to guage imported petroleum and petroleum products in all Customs districts in accordance with the provisions of section 151.43 of the Customs Regulations is approved.

Dated: December 17, 1980.

A. Piazza,

Director, Entry Procedures and Penalties Division.

[FR Doc. 80–40157 Filed 12–23–80; 8:45 am]

BILLING CODE 4810–22–M

[T.D. 80–306]

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Bulk Liquid Surveys, Inc., 4646 Parkside Drive, Baltimore, Maryland 21206, to gauge imported petroleum and petroleum products in the Customs districts of Delaware and Maryland in accordance with the provisions of section 151.43 of the Customs Regulations is approved.

Dated: December 17, 1980.

A. Piazza,

Director, Entry Procedures and Penalties Division.

[FR Doc. 80–40158 Filed 12–23–80; 8:45 am]

BILLING CODE 4810–22–M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Public Law 92–463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC, on February 4, 1981, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues which the Veterans Administration needs to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam War.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may only direct questions in writing to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Office of the Special Assistant to the Chief Medical Director on Environment Medicine (102), Room 848, Department of Medicine and Surgery, Veterans Administration Central Office, Washington, DC 20420 (telephone: (202) 389–5411).

Dated: December 17, 1980.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 80–40127 Filed 12–23–80; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 249
Wednesday, December 24, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, January 2, 1980.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-2348-80 Filed 12-22-80; 10:28 am]

BILLING CODE 6351-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will consider an additional item on the subject listed below on Friday, December 19, 1980, following the Special Open Meeting, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

In addition the Personnel items scheduled for consideration in closed session December 18, 1980, have been rescheduled for December 19, 1980.

Agenda, Item Number, and Subject

General—1—Final Allocations for the fiscal year 1982 Congressional Budget.

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.

Issued: December 19, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-2351-80 Filed 12-22-80; 1:38 pm]

BILLING CODE 6712-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 83384, December 18, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., December 22, 1980.

CHANGE IN THE MEETING: The following items have been added:

Item Number, Docket Number, and Company

M-2. RM80-21, Regulations Under Section 110, 105 and 106(b) of the Natural Gas Policy Act of 1978

CP-2. CP80-502 and CP80-520, Natural Gas Pipeline Company of America; CP81-43, Energy Gathering, Inc.

CAP-4. ER80-520 and EL80-8, Montaup Electric Company.

Kenneth F. Plumb,

Secretary.

[S-2347-80 Filed 12-22-80; 9:27 am]

BILLING CODE 6450-85-M

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 10 a.m., Wednesday, December 31, 1980.

PLACE: 1700 G Street NW., board room, six floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

MATTERS TO BE CONSIDERED:

Permission to Organize a New Federal Association—James E. Tallier, *et al.*, Gretna, Louisiana

Service Corporation Activity—Baltimore Federal Savings and Loan Association, Baltimore, Maryland

Preliminary Application For Conversion To a Federal Mutual Charter Statewide Savings and Loan Association, Kingston, New York

Request For Extension of "Grace Period" re: Merger Application Guranty Federal Savings and Loan Association, Gainesville, Florida *into* Fortune Federal Savings and Loan Association, Clearwater, Florida

Extension of Time—Joliet Federal Savings and Loan Association, Joilet, Illinois

Preliminary Application for Conversion on Basis of Merger; Maintenance of Branch Office; Cancellation of Membership and Insurance; and Transfer of Stock McDowell Savings and Loan Association, Marion, North Carolina *into* Asheville Federal Savings and Loan Association, Asheville, North Carolina

Service Corporation Activity—First Federal Savings and Loan Association of Watertown, Watertown, South Dakota

Management Interlocks Prohibited by Section 584.9(b)—Southern Union Company ("Southern"), Dallas, Texas

Designation of Steven Opsal as Supervisory Agent as provided by Section 501.10 and 501.11 of the General Regulations of the Federal Home Loan Bank Board

Proposed Merger—Chester County Federal Savings and Loan Association West Chester, Pennsylvania *into* Commonwealth Federal Savings and Loan Association, Norristown, Pennsylvania

Application for Bank Membership—Independance Savings Bank, Brooklyn, New York

Application for Bank Membership—Niagara County Savings Bank, Niagara Falls, New York

No. 435, December 22, 1980.

[S-2349-80 Filed 12-22-80; 10:47 am]

BILLING CODE 6720-01-M

5

FEDERAL HOME LOAN MORTGAGE CORPORATION.

TIME AND DATE: 1 p.m., Wednesday, December 31, 1980.

PLACE: 1700 G Street NW., board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Henry Judy, (202-789-4734).

MATTERS TO BE CONSIDERED: Privacy Act of 1974—Republication of Federal Home Loan Mortgage Corporation Systems of Records.

[S-2354-80 Filed 12-22-80; 3:59 pm]

BILLING CODE 6720-01-M

6

[USITC SE-80-60]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, January 6, 1981.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
a. Window shades (Docket No. 699).
5. Peanuts (Inv. 22–42)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–2353–80 Filed 12–22–80; 3:51 pm]

BILLING CODE 7020–02–M

7

POSTAL SERVICE BOARD OF GOVERNORS.

The Board of Governors of the United States Postal Service, pursuant to its bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 3 p.m. on Thursday, January 8, in the East Conference Room, and at 8 a.m. on Friday, January 9, 1981, in the West Conference Room of the Lyndon Baines Johnson Library, 2313 Red River, Austin, Texas 78705. Except as indicated in the following paragraphs, the meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

On december 1, 1980, the Board of Governors unanimously (except for Mr. Babcock, who was not present at the time) voted to close to public observation portions of its next meeting, which is currently scheduled for January 8, 1981. Each of the members of the Board voted in favor of closing this meeting which is expected to be attended by the following persons: Governors Babcock, Camp, Ching, Hardesty, Hughes, Jenkins, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Counsel to the Governors Califano; Secretary to the Board Cox; and Senior Assistant Postmaster General Finch.

A portion of the meeting to be closed is to involve a discussion of the election of a Chairman and Vice-Chairman of the Board. A second portion of the meeting to be closed is to involve a discussion of plans for administrative and adjudicative litigation of various E–COM issues. The third portion of the meeting to be closed involves a discussion of developments in the current rate case pending before the Postal Rate Commission (Commission Docket No. R80–1).

Agenda

Thursday Afternoon Session (Closed)

1. Postal Ratemaking Developments.
(The Board will discuss the status of the general rate case currently pending before the Postal Rate Commission (Commission Docket No. R80–1).)
2. Discussion of E–COM Issues.
(The Board will discuss plans for administrative and adjudicative litigation of various E–COM issues, including an anticipated proceeding before the Postal Rate Commission to which the Commission has assigned Docket No. MC80–1 and the pending action before the U.S. Court of Appeals for the D.C. Circuit captioned *Governors* v. *Postal Rate Commission*.)
3. Election of Chairman and Vice-Chairman of the Board.
(Under the Board's Bylaws, the first regular meeting of each calendar year is designated as the Annual Meeting. The terms of the Chairman and Vice-Chairman of the Board expire at the end of the first Annual Meeting following the meeting at which they were elected. Accordingly, the Board will consider the election of a Chairman and Vice-Chairman.)

Friday Session (Open)

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.
(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Report of Regional Postmaster General.
(Mr. Cooper, Regional Postmaster General, will report on postal conditions in the Southern Region.)
4. Annual Report on Open Meetings Compliance.
(Mr. Cox, General Counsel, will present for approval of the Board the Annual Report to Congress that is required by the Government in the Sunshine Act regarding the Board's compliance with the Act.)
5. Annual Report of the Postmaster General.
(Mr. Duka, Assistant Postmaster General, Public and Employee Communications Department, will present for approval of the Board the Annual Report of the Postmaster General to the Board concerning the operations of the Postal Service, as required by 39 U.S.C. § 2404. Upon approval thereof, or after making such changes as it considers appropriate, the Board is to transmit this report to the President and the Congress.)
6. Capital Investment Projects:
a. Capital Investment for E–COM System
(Mr. Jaquish, Senior Assistant Postmaster General for Research and Technology, will present the proposal to approve necessary capital investments to implement the proposed Electronic Computer Orignated Mail (E–COM) service.
b. General Mail Facility and Vehicle Maintenance Facility for New Castle, Pennsylvania
(Mr. Biglin, Senior Assistant Postmaster General for Administration, will present a proposal for a new General Mail Facility and Vehicle Maintenance Fatility at New Castle, Pennsylvania.)
c. General Mail Facility and Vehicle Maintenance Facility for Phoenix, Arizona
(Mr. Biglin will present a proposal for a new GMF and VMF for Phoenix, Arizona.)
d. General Mail Facility and Vehicle Maintenance Facility at Norfolk, Virginia
(Mr. Biglin will present a proposal for a new GMF and VMF at Norfolk, Virginia. At its meeting of April 3, 1979, the Board approved the general concept of new General Mail Facility at Norfolk, Virginia, and authorized an investment of up to $2 million for necessary) site acquisition and building design, requesting that management present the project for further consideration by the Board at a subsequent date. The Board will consider giving final approval to the necessary capital investment for his project.)
7. Representation of Postal Service Officials in Litigation Arising from Performance of Official Duties.
(Under existing postal regulations, postal employees who are named as defendants in suits resulting from incidents occurring within the scope of the performance of their official duties may request reimbursement of legal fees and adverse judgments in appropriate cases. Requests are considered by the appropriate Regional Counsel. Reimbursement in a reasonable amount may be made if it is equitable and fair to do so and if the employee acted reasonably in the circumstances within the scope of his authority. It is proposed that any requests for reimbursement by senior postal officials, including members of the Board, would be considered by the General Counsel rather than by Regional Counsel, and the Board will consider a Resolution which would so provide and would affirm that the pertinent provisions of the Postal Service's Employee and Labor Relations Manual regarding legal assistance in suits brought against postal employees arising out of official acts would apply to senior postal officials as well as other postal employees.)

Louis A. Cox,

Secretary.

[S–2352–80 Filed 12–22–80; 2:54 pm]

BILLING CODE 7710–12–M

8

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., January 8, 1981.

PLACE: 955 L'Enfant Plaza North, SW., board room, room 2-500, fifth floor, Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS: Portions closed to the public:

9 a.m.

1. Consideration of internal personnel matters.
2. Litigation Report.
3. Status Report on Conrail Study.
4. Review of Conrail proprietary and financial information for monitoring and investment purposes.
5. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.
6. D&H action plan and critique of FRA Section 401 Study
7. State presentations regarding future plans for D&H.

Portions open to the public:

10:30 a.m.

8. Approval of minutes of the December 3 and 4, 1980 Board of Directors meeting.
9. Consideration of Conrail drawdown request for January.
10. Report on Conrail monitoring.
11. Contract Actions (extensions and approvals).

CONTACT PERSON FOR MORE INFORMATION: Alex Bilanow (202) 426-4250.

[S-2350-80 Filed 12-22-80; 12:28 p.m.]

BILLING CODE 8240-01-M

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Federal Register

Vol. 45, No. 249

Wednesday, December 24, 1980

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of **Rules Going Into Effect Today.**

Rules Going Into Effect Friday, December 26, 1980

ENVIRONMENTAL PROTECTION AGENCY

78948 11–25–80 / Clean Air Act emission warranties; voluntary aftermarket part self-certification regulations

78685 11–26–80 / Ohio; approval and promulgation of implementation plan

78121 11–25–80 / Revised deadline for submission of Volatile Organic Compound (VOC) RACT regulations for Set II CTG sources

FEDERAL COMMUNICATIONS COMMISSION

78135 11–25–80 / FM broadcast station in Bettendorf, Iowa; changes in table of assignments

78696 11–26–80 / FM broadcast stations in Central City, Nebr. and Yankton, S. Dak.; changes in table of assignments

78697 11–26–80 / FM broadcast station in Manchester, Vt.; changes in table of assignments

78137 11–25–80 / Provisions to facilitate operation of automatic digital communications systems in the aeronautical enroute service

INTERIOR DEPRATMENT

National Park Service—

78119 11–25–80 / Mt. McKinley National Park mining, climbing and vehicle regulations

Rules Going Into Effect Sunday, December 28, 1980

AGRICULTURE DEPARTMENT

Food Safety and Quality Service—

76965 11–21–80 / Voluntary Federal Meat grading and certification services; increase in fees

SECURITIES AND EXCHANGE COMMISSION

58831 9–5–80 / Registration of municipal securities dealers

Deadlines for Comments on Proposed Rules for the Week of December 28 through January 3, 1981

THE PRESIDENT

79407 12–1–80 / Intent to suspend meat import limitations for calendar year 1981; comments by 12–31–80

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

60447 9–12–80 / Almonds grown in Calif.; formula for computing "adjusted kernel weight"; comments by 12–30–80

75956 11–17–80 / Milk marketing orders all areas; reconstituted milk; preliminary impact statement; comments by 1–2–81

Commodity Credit Corporation—

79492 12–1–80 / 1981 Crop Gum Naval Stores Support program; comments by 12–31–80

Federal Grain Inspection Service—

71486 10–28–80 / Proposed revision to U.S. Standards for beans; comments by 12–29–80

Food Safety and Quality Service—

72197 10–31–80 / Delegation of certain labeling approval authority to Inspectors-in-Charge in the field; comments by 12–31–80

CIVIL AERONAUTICS BOARD

73085 11–4–80 / Imposition of two-year limit for starting service or continuing service after a fitness determination; reply comments by 12–30–80

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

79846 12–2–80 / Amendment to preliminary fishery management plan for seamount groundfish fishery resources; comments by 1–2–81

78738 11–26–80 / Atlantic bluefin tuna fishery; comments by 12–29–80

79844 12–2–80 / Atlantic bluefin tuna provisions; comments by 12–29–80

73077 11–4–80 / Commercial tanner crab fishery off Alaska; final regulations; comments by 1–1–81

79089 11–28–80 / Deep seabed mining; availability of discussion paper; comments by 12–31–80

81633 12–11–80 / Foreign fishing for Billfish, Oceanic Sharks, Wahoo, and Mahi Mahi in the Pacific Ocean; comments by 12–28–80

80845 12–8–80 / Foreign trawl fisheries of the Northwest Atlantic approval of preliminary fishery management plan amendment; comments by 12–29–80

74525 11–10–80 / Groundfish fishery in Bering Sea—Aleutian Island area fishery management plan; comments by 1–1–81

82297 12–15–80 / Hake fisheries of the Northwestern Atlantic; approval of amendment to preliminary fishery management plan; comments by 12–30–80

74178 11–7–80 / Plan approval and proposed regulations for shrimp fishery of the Gulf of Mexico; comments by 1–1–81

81633 12–11–80 / Snail fishery of the Eastern Bering Sea Preliminary Fishery Management Plan Amendment and proposed regulations; comments by 12–29–80

79126 11–28–80 / Trawl Fisheries and Herring Gillnet Fishery of the Eastern Bering Sea and Northeast Pacific; Preliminary Fishery Management Plan Amendment; comments by 12–28–80

CONSUMER PRODUCT SAFETY COMMISSION

76018 11–17–80 / Coal and wood burning appliances; performance provisions and technical data supplied to consumer; comments by 1–2–81

DEFENSE DEPARTMENT

Engineer Corps—

79836 12–2–80 / Permit regulations for controlling certain activities in waters of the United States; comment period extended to 12–31–80

[*See also* 45 FR 62732, 9–19–80]

ENERGY DEPARTMENT

Office of the Secretary—

71498 10–28–80 / Consolidated State Grant Programs; comments by 12–29–80

ENVIRONMENTAL PROTECTION AGENCY

71538 10–28–80 / Air pollution; standards of performance for new stationary sources; publication rotogravure printing; comments by 12–29–80

82280 12–15–80 / Approval and promulgation of implementation plans; proposed revision to the New York State implementation plan; comments extended to 12–30–80

[Originally published at 45 FR 43794]

79514 12–1–80 / Approval and promulgation of implementation plans; proposed approval of Oklahoma State Variance; comments by 12–31–80

79514 12–1–80 / Approval and promulgation of implementation plans; Texas emission offsets; comments by 12–31–80

72217 10–31–80 / Consideration of Guam Implementation Plan Revision; comments by 12–30–80

76147 11–18–80 / Criteria for classification of solid waste disposal facilities and practices; accumulation of cadmium by food-chain crops grown on land amended with solid waste containing cadmium; interim final regulations; comments by 1–2–81

72883 11–3–80 / General pretreatment regulations for existing and new sources, grace period for NPDES States; comments by 1–2–81

72035 10–30–80 / Hazardous waste; identification and listing; chromium; comments by 12–30–80

72029 10–30–80 / Hazardous waste; identification and listing; hexavalent chromium, extraction procedure (EP) toxicity; comments by 12–30–80

72027 10–30–80 / Hazardous waste management system; general and identification and listing of hazardous waste; comments by 12–29–80

79119 11–28–80 / *O,O*-dimethyl *S*-[(4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl]phosphorodithiote; proposed tolerances; comments by 12–29–80

79836 12–2–80 / Proposed approval, with exception, of reasonably available control technology regulations; comments by 1–2–81

79838 12–2–80 / Proposed delayed S.I.P. compliance order for Virginia Electric and Power Co's. Possum Point generating station; comments by 1–2–81

76147 11–18–80 / Solid waste disposal facilities and practices; criteria for classification; interim regulations; comments by 1–2–81

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81079 12–9–80 / FM broadcast stations in Aguada, Arecibo, Cidra, Lajas, Manati, Mayaquez, Quebradillas, and Utuado, P.R.; reply comments period extended to 1–3–81

[*See also* 45 FR 58624, 9–4–80]

73719 11–6–80 / FM broadcast station in Andrews and Pawley's Island, S.C., proposed changes in table of assignment; comments by 12–29–80

81080 12–9–80 / FM broadcast stations in Farmville and Appomattox, Va.; reply comments period extended to 12–28–80

[*See also* 45 FR 63532, 9–17–80]

78735 11–26–80 / FM broadcast station in Los Lunas, N. Mex.; changes in table of assignments; comments by 12–30–80

73720 11–6–80 / FM broadcast station in North Las Vegas, Nevada; proposed changes in table of assignments; comments by 12–29–80

73980 11–7–80 / FM broadcast station in St. Johnsburg, VT.; changes in table of assignments; comments by 12–29–80

71384 10–28–80 / Policies governing ownership and operation of domestic satellite earth stations in Alaskan bush communities; comments by 12–29–80

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72681 11–3–80 / Mergers of savings and loan associations; treatment of goodwill in calculating net worth and discounts, on assets; comments by 12–31–80

72675 11–3–80 / Renegotiable rate mortgage; maximum annual interest-rate changes and grouping of loans; conforming alternative mortgage instrument amendments; comments by 12–30–80

82270 12–15–80 / Shared appreciation mortgage; graduated payment adjustable mortgage; comments extended to 12–30–80

[*See also* 45 FR 66798, 66801, 10–9–80]

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72714 11–3–80 / Public availability of Agency records and informational materials; comments by 1–2–81

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72713 11–3–80 / Display of the Code of Ethics for Government Service; comments by 1–2–81

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72110 10–31–80 / Coverage of employees of State and local governments; interim regulations; comments by 12–30–80

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72200 10–31–80 / Bioequivalence requirements for quinidine; comments by 12–30–80

65609 10–3–80 / Wart remover drug products (OTC), monograph establishment; comments by 1–2–81

[Corrected at 45 FR 80551, 12–5–80]

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71791 10–30–80 / Federal old-age, survivors, and disability insurance benefits; payment for medical evidence of record; comments by 12–29–80

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Community Planning and Development, Office of the Assistant Secretary—

72691 11–3–80 / Community Development Block Grants; Small Cities Program; comments by 1–2–81

[Corrected at 45 FR 73512, 11–5–80]

72691 11–3–80 / Community Development Block Grants; Small cities program; Puerto Rico; comments by 1–2–81

Federal Housing Commissioner—Office of the Assistant Secretary for Housing—

72697 11–3–80 / Low-income housing; Section 8 existing housing assistance payments program; eviction procedures; comments by 1–2–81

72688 11–3–80 / Minimum property standards; particleboard interior stair treads and certification program; comments by 1–2–81

72668 11–3–80 / Proposed Use of Materials Bulletin No. 70a Particleboard Interior Stair Treads and Certification Program; comments by 1–2–81

[Corrected at 45 FR 73512, Nov. 5, 1980]

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Indian Affairs Bureau—

79094 11–28–80 / Heritage preservation; comments period extended to 12–30–80

[*See also* 45 FR 60923, 9–15–80]

82667 12–16–80 / Provision of funds to tribes for payment of a private attorney's legal services; comments by 1–1–81

Surface Mining Reclamation and Enforcement Office—

71371 10–28–80 / Abandoned Mine Lands Reclamation Program; comments by 1–3–81

74943 11–3–80 / Commonwealth of Pennsylvania's abandoned mine land reclamation plan; comments by 1–3–81

82276 12–15–80 / Resubmitted Iowa permanent regulatory program; comments by 12–31–80

73512 11–5–80 / West Virginia; abandoned mine lands reclamation program; comments by 1–3–81

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79095 11–28–80 / Standards for inmate grievance procedures; comments by 12–29–80

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75238 11–14–80 / Occupational safety and health for conveyors; reopening of record to introduce new information; comments by 12–29–80

75232 11–14–80 / Walkaround compensation; comments by 12–29–80

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65474 10–2–80 / Domestic licensing of production and utilization facilities; comments by 12–31–80

71807 10–30–80 / NRC's jurisdiction over persons using byproduct, source and special nuclear material in offshore waters beyond agreement States' territorial waters; comments by 12–29–80

[Corrected at 45 FR 78700, 11–26–80]

66754 10–7–80 / Proposed general statement of policy and procedure for enforcement actions; comments by 12–31–80

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71363 10–28–80 / Reduction in force rules; identification of positions with a transferring function; comments by 12–29–80

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75182 11–14–80 / Interim notice-of-sales form for transactions; comments by 12–31–80

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80125 12–3–80 / Revision of regulations, draft; comments by 1–1–81

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73716 11–6–80 / Radar observer endorsement; demonstration of skills; comments by 12–31–80

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75098 11–13–80 / General Operating and Flight Rules; issuance of Notices to Airmen, for communicating emergency flight rules; comments by 12–29–80

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71990 10–30–80 / Urban transportation planning; comments by 12–30–80

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70261 10–23–80 / Yacht documentation fees; comments by 12–29–80

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71990 10–30–80 / Urban transportation planning; comments by 12–30–80

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79493 12–1–80 / Adjustable-rate mortgages; comments extended to 12–30–80

[Originally published at 45 FR 64196, 9–29–80]

71571 10–29–80 / Fiduciary powers of national banks and collective investment funds; comments by 12–31–80

75669 11–17–80 / Securities Exchange Act Disclosure Rules applicable to corporations other than banks; comments by 1–2–81

Internal Revenue Service—

71367 10–28–80 / Investment credit for qualified rehabilitated buildings; comments by 12–29–80

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73079 11–4–80 / Revision of tetanus toxoid potency test; comments by 1–5–81

Food Safety and Quality Service—

73947 11–7–80 / Accredited laboratory program for meat and poultry products inspection; comments by 1–6–81

71365 10–28–80 / Net weight labeling; meat and poultry; comments by 1–5–81

[Originally published at 45 FR 53002, 8–8–80]

Soil Conservation Service—

81210 12–10–80 / Great Plains Conservation Program, evaluation; comments by 1–5–81

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73087 11–4–80 / Classification and exemption of air taxi operators; dual authority; comments by 1–5–81

73092 11–4–80 / Rules of conduct in Board proceedings; comments by 1–5–81

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81213 12–10–80 / Education assistance eligibility, character of discharge; comments by 1–7–81

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73963 11–7–80 / Provisions for election to local advisory committees of oveseas dependents' schools; comments by 1–6–81

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73684 11–6–80 / Electric and hybrid vehicle research, development, and demonstration program; equivalent petroleum-based fuel economy calculation; comments by 1–5–81

71746 10–29–80 / Price support loans for municipal waste energy projects; comments by 1–5–81

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80125 12–3–80 / Natural Gas Policy Act of 1978; alternative fuel price ceilings for incremental pricing; comment period extended to 1–9–81

[Originally published at 45 FR 74505, 11–10–80]

81211 12–10–80 / Natural Gas Policy Act of 1978; alternative fuel price ceilings for incremental pricing; comments by 1–9–81

[*See also* 45 FR 74505, 11–10–80]

81063 12–9–80 / Procedures for jurisdictional agencies to submit recommendations of areas for designation as tight formations; comments by 1–5–81

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73696 11–6–80 / California State implementation plan revision: Amador, El Dorado, Nevada, Placer, and Tuolumne Counties; comments by 1–5–81

73971 11–7–80 / Consideration of approval of revision to New Jersey State Implementation Plan; comments by 1–6–81

81069 12–9–80 / Consideration of deadlines for revision of Illinois State Implementation plan; comments by 1–8–81

73967 11–7–80 / Consideration of revisions to California State Implementation Plan; comments by 1–6–81

73702 11–6–80 / Designation of areas for air quality planning purposes; State of Iowa; comments by 1–5–81

80558 12–5–80 / Idaho Implementation Plan; proposed revision; comments by 1–5–81

80314 12–4–80 / Implementation plans; North Carolina; air quality surveillance plan; comments by 1–5–81

80315 12–4–80 / Implementation plans; North Carolina; approval of plan revisions; comments by 1–5–81

80319 12–4–80 / Maine application for interim authorization, phase I, hazardous waste management program; comments by 1–10–81

80559 12–5–80 / Oregon Implementation Plan, proposed revision; comments by 1–5–81

66726 10–7–80 / Zone-depleting Chlorofluorocarbons; proposed production restriction; comments by 1–5–81

79117 11–28–80 / South Carolina's application for interim authorization, phase I, hazardous waste management program; comments by 1–6–81

73696 11–6–80 / State Implementation Plans; approval of 1982 ozone and carbon monoxide plan revisions for areas needing an attainment date extension; comments by 1–5–81

79118 11–28–80 / Tennessee's application for interim authorization, phase I, hazardous waste management program; comments by 1–5–81

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81797 12–12–80 / AM stereo broadcasting proceeding; comments by 1–9–81

[Originally published at 45 FR 59350, 9–9–80]

59350 9–9–80 / AM stereophonic broadcasting; reply comments by 1–8–81

63011 9–23–80 / Cable television systems and divestiture requirement; comments by 1–8–81

[Comment period extended at 45 FR 81217, 12–10–80]

71628 10–20–80 / Changes in the corporate structure and operations of COMSAT; reply comments by 1–9–81

79842 12–2–80 / FM broadcast station in Santa Barbara, Calif.; reply comments period extended to 1–5–81

[*See also* 45 FR 28770, 4–11–80]

71393 10–28–80 / FM broadcast station in South Lake Tahoe, Calif., table of assignments; reply comments by 1–9–81

55491 8–20–80 / FM quadraphonic broadcasting; reply comments by 1–9–81

70023 10–22–80 / Improvements to UHF television reception; comments by 1–5–81

79518 12–1–80 / Inquiry relating to the Commission's radio operator licensing program; reply comments extended to 1–5–81

[Originally published at 45 FR 54778, 8–18–80]

65639 10–3–80 / Maritime radio services; public coast stations operating on frequencies below 27,500 kHz, establishment limitation removed; reply comments by 1–9–81

79516 12–1–80 / Radio broadcast services TV channels 5 and 6 and FM channels 251–300 in the State of Hawaii; reply comments by 1–9–81

74946 11–13–80 / TV broadcast station in East St. Louis, Ill.; changes in table of assignments; reply comments by 1–4–81

70921 10–27–80 / TV broadcast station in Victoria, Tex., changes in table of assignments; reply comments by 1–4–81

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Food and Drug Administration—

73092 11–4–80 / Canned sardines and sardine-type products; establishment of standards; comments by 1–5–81

59540 9–9–80 / Establishment of conditions under which over-the-counter (OTC) anthelmintic drugs products, which destroy pinworms, are generally recognized as safe and effective and not misbranded; reply comments by 1–7–81

[Corrected at 45 FR 65609, 10–3–80]

71366 10–28–80 / Food labeling; net weight labeling requirements; comments by 1–5–81

[Originally published at 45 FR 53023, 8–8–80]

73095 11–4–80 / Frozen lobsters, rock lobsters, spiny lobsters and slipper lobsters; establishment of standards; comments by 1–5–81

74374 11–7–80 / Intent to amend performance standards for laser products; comments by 1–6–81

74158 11–7–80 / Restrictions on sale, use and distribution of alpha-fetoprotein test kits; comments by 1–6–81

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76497 11–19–80 / Indian health; revision of regulations; comments by 1–5–81

Health Care Financing Administration—

74174 11–7–80 / Clinical laboratories; quality control standards for alpha-fetoprotein test kits; comments by 1–6–81

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73454 11–4–80 / Nondiscrimination rules on basis of age in programs or activities receiving Federal financial assistance from HUD; comments by 1–5–81

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81081 12–9–80 / Proposed addition of national wildlife refuges to the list of open areas for migratory bird hunting, upland game hunting and big game hunting; comments by 1–8–81

66410 10–6–80 / Proposed threatened status for the Madison Cave Isopod; comments by 1–5–81

Land Management Bureau—

83580 12–19–80 / Grazing regulations amendments; comments by 1–9–81

Surface Mining and Reclamation Enforcement Office—

81526 12–10–80 / Coal processing waste banks performance standards; comments by 1–10–81

83544 12–19–80 / West Virginia Permanent Regulatory Program (resubmitted); comments by 1–6–81

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76718 11–20–80 / Railroad cost accounting system compliance with uniform system of accounts; comments by 1–5–81

81217 12–10–80 / Railroad cost recovery index, general rate increases; comments by 1–9–81

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74499 11–10–80 / Space transportation system, insurance and indemnification of NASA space vehicle users; comments by 1–9–81

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73080 11–4–80 / Electric Utilities; petition for rulemaking published; comments by 1–5–81

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80313 12–4–80 / Order of passage of vessels through the Panama Canal; comments by 1–5–81

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79104 11–28–80 / Proposed expansion of ZIP Code system by adding a hyphen and four new numbers; comments by 1–5–81

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74510 11–10–80 / Statutory lien where sickness benefits paid; comments by 1–9–81

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69479 10–21–80 / Individualized investment management services; comments by 1–9–81

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80460 12–4–80 / Commuter pilot-in-command operating experience requirements and extension of compliance date for instrument rating requirement; comments by 1–5–81

67283 10–9–80 / Flight crewmember flight and duty time limitations and rest requirements; reply comments period extended to 1–10–81

[See also 44 FR 53316, 8–11–80]

67103 10–9–80 / Joint petition for rulemaking by Transamerica Airlines, Inc. and World Airways, Inc. to allow certificate holders' operations to be conducted under a flight operations control system; comments by 1–7–81

73688 11–6–80 / Petitions for rulemaking, summary of petitions received and dispositions of petitions denied; comments by 1–6–81

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Alcohol, Tobacco and Firearms Bureau—

73692 11–6–80 / Finger Lakes Viticultural Area, establishment; comments by 1–5–81

73692 11–6–80 / "Tied-house" regulations, credit to retailers in arrears; comments by 1–5–81

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73512 11–5–80 / Crude oil windfall tax; tax deposits and refunds based on the net income limitation; comments by 1–5–81

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81213 12–10–80 / Educational assistance eligiblity, character of discharge; comments by 1–7–81

81068 12–9–80 / Payment of educational assistance allowance to participants in the Veterans' Educational Assistance Program on active duty; comments by 1–7–81

81787 12–12–80 / Government-furnished headstones or markers; increase in payment; comments by 1–9–81

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81890 12–12–80 / Baker District Advisory Council, Baker, Oreg. (open), 1–2–81

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80214 12–3–80 / Decontamination of Three Mile Island, Unit 2, Advisory Panel, Harrisburg, Pa. (open), 12–30–80

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80220 12–3–80 / Actuarial Advisory Committee, railroad retirement acounts, Chicago, Ill. (open), 12–30–80

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ENVIRONMENTAL PROTECTION AGENCY

79117 11–28–80 / South Carolina application for interim authorization, phase I, hazardous waste management program, Columbia, S.C., 12–30–80

79118 11–28–80 / Tennessee's application for interim authorization, phase I, hazardous waste management program, Nashville, Tenn., 12–29–80

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office—

81526 12–10–80 / Coal processing waste banks performance standards, Washington, D.C., 12–29–80

82276 12–15–80 / Iowa regulatory program, Des Moines, Iowa, 12–30–80

List of Public Laws

Last Listing, December 23, 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. 2170 / Pub. L. 96–559 To provide for the reimbursement of legal expenses incurred by the city of Fairfax with respect to a 1971 entry and search by employees of the Federal Government. (Dec. 22, 1980; 94 Stat. 3264) Price $1.

H.R. 5487 / Pub. L. 96–560 To designate certain National Forest System lands in the States of Colorado, South Dakota, Missouri, South Carolina, and Louisiana for inclusion in the National Wilderness Preservation System, and for other purposes. (Dec. 22, 1980; 94 Stat. 3265) Price $1.25.

S. 2163 / Pub. L. 96-561 To provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes. (Dec. 22, 1980; 94 Stat. 3275) Price $1.75.

S. 1824 / Pub. L. 96-562 To designate the "John D. Larkins, Jr., Federal Building" (Dec. 22, 1980; 94 Stat. 3303) Price $1.

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

RULES GOING INTO EFFECT

83497 12-19-80 / EPA—Grants for construction of treatment works; final rule; effective 12-19-80

82828 12-16-80 / Labor—Federal standards for federally funded grants and agreements relating to public contracts and property management; effective 12-16-80

[Comments by 2-17-81]

DEADLINES FOR COMMENTS ON PROPOSED RULES

82272 12-15-80 / HUD/CPD—Community development block grants, entitlement grants; comments by 2-13-81

82273 12-15-80 / HUD/FHC—Review of applications for housing assistance and allocation of housing assistance funds; comments by 2-13-81

83554 12-19-80 / HHS/PHS—Project grants for Community Health Centers; comments by 2-17-81

83566 12-19-80 / HHS/PHS—Project grants for Migrant Health Centers; comments by 2-17-81

83998 12-19-80 / Labor—Implementation of Federal Management Circular governing allowability of costs incurred by State and local governments in administering Federal financial assistance programs; comments by 1-19-81

83914 12-19-80 / Labor/WH—Labor standards on projects or productions assisted by grants from the National Foundation for the Arts and the Humanities; comments by 2-17-81

APPLICATIONS DEADLINES

82299 12-15-80 / Commerce/MBDA—Financial assistance application to operate four New York region projects; apply by 1-15-81

83307 12-18-80 / Commerce/MBDA—Northern and Central Florida; operation of General Business Service Center; apply by 1-13-81

83307 12-18-80 / Commerce/MBDA—Pittsburgh, Pa. SMSA; operation of General Business Services Program; apply by 1-16-81

83156 12-17-80 / Commerce/NOAA—Fisheries development, strengthening of industry, and increasing supply available to consumers, availability of Saltonstall-Kennedy funds, apply by 2-13-81

83025 12-17-80 / HHS/HSA—General family planning training, availability of project grants; correction; apply by 4-1-81

[*See also* 45 FR 71432, 10-28-80]

82361 12-15-80 / HUD/CPD—Small multifamily rental property rehabilitation demonstration program; apply by 3-6-81

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83307 12-18-80 / Commerce/MBDA—Pittsburgh, Pa., SMSA; operation of General Business Services Program; Pittsburgh, Pa., 12-29-80

82358 12-15-80 / HHS/NIH—Aging National Advisory Council, Bethesda, Md. (partially open), 1-29 and 1-30-81

83674 12-19-80 / HHS/NIH—Allergy and Infectious Diseases National Advisory Council, Subcommittees on Allergy and Immunology and Microbiology and Infectious Diseases, Bethesda, Md. (partially open), 1-29 and 1-30-81

82359 12-15-80 / HHS/NIH—Arthritis, Metabolism, and Digestive Diseases National Advisory Council, Bethesda, Md. (partially open), 1-14 through 1-16-81

83673 12-19-80 / HHS/NIH—Biometry and Epidemiology Contract Review Committee, Bethesda, Md. (partially open), 1-29-81

83673 12-19-80 / HHS/NIH—Cancer Biology and Diagnosis Division of the Board of Scientific Counselors, Frederick, Md. (partially closed), 1-29 through 1-31-81

83674 12-19-80 / HHS/NIH—Cancer Special Program Advisory Committee, Bethesda, Md. (partially open), 3-12 and 3-13-81

83674 12-19-80 / HHS/NIH—Clinical Cancer Education Committee, Bethesda, Md. (partially open), 2-25 and 2-26-81

83673 12-19-80 / HHS/NIH—Environmental Health Sciences, National Council (Board of Scientific Counselors), Research Triangle Park, N.C. (partially closed), 1-28 and 1-29-81

83675 12-19-80 / HHS/NIH—Environmental Health Sciences National Advisory Council, Research Triangle Park, N.C. (partially open), 1-19-81

83675 12-19-80 / HHS/NIH—Eye National Advisory Council, Bethesda, Md. (partially open), 1-18 through 1-21-81

83676 12-19-80 / HHS/NIH—General Medical Sciences National Advisory Council, Bethesda, Md. (partially open), 1-29 and 1-30-81

83674 12-19-80 / HHS/NIH—Resources, Centers, and Community Activities Division of the Board of Scientific Counselors, Silver Spring, Md. (open), 1-29 and 1-30-81

83676 12-19-80 / HHS/NIH—Toxicology, National Programs, Board of Scientific Counselors, Research Triangle Park, N.C. (partially open), 1-15 and 1-16-81

83677 12-19-80 / Intergovernmental Relations Advisory Commission—Meeting to discuss policymaking by Office of Management and Budget, Chicago, Ill. (open), 1-8 and 1-9-81

83068 12-17-80 / NFAH—National Council on the Arts Media Arts Panel (Film/Video Production), Washington, D.C. (closed), 1-5 through 1-7-81

83068 12-17-80 / NFAH—National Council on the Arts, Special Projects Panel (Inter-Arts Program), Washington, D.C. (partially open), 1-5 and 1-6-81

83068 12-17-80 / NSF—Behavioral and Neural Sciences Advisory Committee, Anthropology-Systematic (Museum) Collections, Washington, D.C. (closed), 1-29 and 1-30-81

83068 12-17-80 / NSF—Environmental Biology Advisory Committee, Ecological Sciences Subcommittee, Washington, D.C. (closed), 1-21 through 1-23-81

83069 12-17-80 / NSF—Environmental Biology Advisory Committee, Population Biology and Physiological Ecology Subcommittee, Washington, D.C. (closed), 1-29 and 1-30-81

83069 12-17-80 / NSF—Environmental Biology Advisory Committee, Systematic Biology Subcommittee, Washington, D.C. (partially open), 1-15 and 1-16-81

83069 12-17-80 / NSF—Physiology, Cellular, and Molecular Biology Advisory Committee, Cell Biology Subcommittee, Washington, D.C., 1-21 through 1-23-81

83069 12-17-80 / NSF—Social and Economic Science Advisory Committee, Executive Committee, Washington, D.C. (closed), 1-9 and 1-10-81

OTHER ITEMS OF INTEREST

82354 12–15–80 / EPA—Municipal wastewater treatment works; construction grants, consolidated guidance for facility planning; comments by 1–29–81

83172 12–17–80 / HHS—Adoption assistance and child welfare; demonstration project assisting those wishing to comment on proposed regulations

83816 12–19–80 / HHS—Semiannual agenda of regulations

83670 12–19–80 / HHS/ADAMHA—Filing of annual reports of advisory committees

83676 12–19–80 / HHS/NIH—Renewal of National Cancer Institute Committees

82273 12–15–80 / HUD/Sec'y—Small cities housing assistance plan; congressional waiver request

83699 12–19–80 / OMB—Federal Domestic Assistance Program; comments by 2–6–81

83701 12–19–80 / OMB—Memorandum on Federal support for hospital construction in overbedded areas



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Wednesday
December 24, 1980

Part II

Panama Canal Commission

Privacy Act of 1974; Annual Publication of Systems of Records

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records: Annual Publication, Deletions, Revisions

AGENCY: Panama Canal Commission.

ACTION: Deletions and revisions to Panama Canal Commission systems of records; and annual publication.

SUMMARY: The Panama Canal Commission is required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), to give annual notice in the **Federal Register** of the existence and character of records it maintains. An interim notice appeared at 44 FR 55679 (September 27, 1979) informing the public that the systems of records of the Panama Canal Company and the Canal Zone Government (the predecessors of the Panama Canal Commission) would remain in effect until publication of the revised systems of records of the Panama Canal Commission could be accomplished.

The most recent full-text publication in the **Federal Register** of the Canal agencies' systems of records appeared at 42 FR 48182 (September 22, 1977). A notice of incorporation by reference appeared at 42 FR 43641 (September 26, 1978). The purpose of this notice is to identify the administrative changes to these systems required as a result of entry into force on October 1, 1979, of the Panama Canal Treaty of 1977 and related agreements. This notice also serves to meet the Privacy Act requirements for annual publication of notices of systems of records, and has the effect of establishing systems of records for use by the Panama Canal Commission.

DATES: This document fulfills the Privacy Act annual notice requirements for 1980.

ADDRESS: K. E. Goldsberry, Agency Records Officer (Chief, Administrative Services Division), Panama Canal Commission, APO Miami 34011.

FOR FURTHER INFORMATION CONTACT: Hazel M. Murdock, Assistant to the Secretary, Panamal Canal Commission, Suite 312 Pennsylvania Building, 425 13th St. N.W., Washington, D.C. 2004. (Telephone: 202–724–0104.)

SUPPLEMENTARY INFORMATION: The Panama Canal Treaty of 1977 between the United States of America and the Republic of Panama took effect on October 1, 1979. On that date, the United States relinquished and Panama assumed plenary jurisdiction over the area known as the Canal Zone. Pursuant to the Panama Canal Act of 1979, Pub. L. 96–70, 93 Stat. 452, the statute implementing the new treaty, the Canal Zone Government ceased operation and the Panama Canal Company was replaced by a new United States agency, the Panama Canal Commission. By the terms of the treaty, certain functions formerly performed by the Panama Canal Company/Canal Zone Government were curtailed, discontinued, or transferred to other U.S. Government agencies or to Panamanian administration. For example, the schools and medical services formerly provided by the Canal Zone Government are now being provided by the Department of Defense. This notice incorporates the administrative changes brought about by the Panama Canal Treaty of 1977 and the Panama Canal Act of 1979, and has the effect of establishing systems of records for use by the Panama Canal Commission.

As a result of changes brought about by implementation of the Panama Canal Treaty of 1977, 26 systems of records previously noticed by the Panama Canal Company/Canal Zone Government have become inactive systems, i.e., they have been retired to the Agency Records Center for storage and eventual disposition in accordance with Federal records retention schedules. Although the Panama Canal Commission will not add new records to these systems, the systems will continue to be described in the Commission's notice of Privacy Act systems of records. The original titles and alphanumerical designations, descriptions, and authorities cited for these systems have generally been retained. Changes have been made to update the system location, authority for maintenance of the system, system manager and address, and notification procedure. An alphabetical listing and full-text descriptions of the 26 inactive systems appear in the latter part of this notice.

Further, 16 systems of records have been deleted as a result of discontinuance of authority to carry out certain functions. The records formerly contained in these systems have been destroyed or transferred to other U.S. Government agencies. Two other systems are being deleted for administrative reasons.

The changes to the remaining systems of records are administrative in nature. They include modifications and revisions to reflect changes in the alphanumerical designations, authority, and address of the Panama Canal Commission and, where applicable, changes in location, system manager, system name, and notification and access procedures. The categories of individuals and categories of records covered in the systems have also been revised, where applicable, to reflect reductions in scope.

In addition, editorial modifications have been made for the purpose of completeness, clarity, and correctness. For example, the retention periods for all systems have been reviewed and updated where necessary; and general routine use No. 7, which permits disclosures to officials of the Government of Panama where necessary for implementation of the treaty, has been incorporated into the specific routine uses for some systems, where applicable, as a convenience to users.

One Commission system was formed by redesignating the system, Employee/Dependent Photo-Identification Cards, PCC–CZG/CALS–1, as General Identification, Photo-Identification and Purchase Authority Records, PCC/AMSA–1 and incorporating certain active residual elements of the inactive system, Purchase Authority Cards, PCC–CZG/ADGS–1.

Similarly, the majority of the records contained in the Company/Government system Health, Medical, Dental, and Veterinary Records Systems, PCC–CZG/HL–1, became inactive and were retired to the Agency Records Center. The remaining active records have been redesignated Industrial Health Records, PCC/HL–1.

These revisions and editorial corrections to the Panama Canal Commission's systems of records do not affect the general character or purpose of any systems described, nor do they expand the population of individuals to whom the systems apply or change any individual rights. Since the modifications merely provide a more accurate description of this agency's systems of records, the revisions are not deemed to be within the purview of the provisions of 5 U.S.C. 552a(o) of the Privacy Act and Office of Management and Budget (OMB) Circular A–108 (Transmittal Memoranda Nos. 1 and 3), which require submission of a report on a new system.

The descriptions of the systems of records maintained by the Panama Canal Commission appear below, preceded by a list of the systems deleted, a list of the changes in the alphanumerical designations, an alphabetical listing of the active systems of records, and a statement of the general routine uses applicable to all systems.

Dated: December 10, 1980.

Fernando Manfredo, Jr.,

Acting Administrator, Panama Canal Commission.

SYSTEMS DELETED:

The following systems, identified by their alphanumerical designation and system name, have been discontinued, and the records have been destroyed by shredding or burning.

PCC–CZG/CACP–1, Vital Installations Access File
PCC–CZG/CACU–1, State Department Visa Lookout Book
PCC–CZG/CACU–2 Immigration and Naturalization Service Lookout Book
PCC–CZG/CACU–3, Customs Fugitive Records
PCC–CZG/CACU–7, Seamen's Locator List
PCC–CZG/CAPL–11, Youth Unit Drug Abuse File
PCC–CZG/CAPS–1, Mail Covers
PCC–CZG/CAPS–3, Prohibitory Orders Against Sending Pandering Advertisements in the Mails
PCC–CZG/ISO–2, Confidential Sources and Contacts
PCC–CZG/ISO–3, Card Index System
PCC–CZG/ISO–4, Index of Contractor Employees
PCC–CZG/ISO–5, Biographical Data Cards
PCC–CZG/ISO–6, Biographical Data Files
PCC–CZG/SC–5, Ethyl Alcohol Certificates of Purchase

The following systems were transferred in their entirety to the U.S. Customs Service, Department of the Treasury; and the Drug Enforcement Agency, Department of Justice:

PCC–CZG/CACU–4, Cardex File—Smuggling; Narcotics; Violators or Suspects and Fugitives
PCC–CZG/CACU–5, Cardex File—Vehicle Exporters

The following two systems are withdrawn for other administrative reasons:

PCC–CZG/10–2, News Media Representatives (system does not contain personal information about individuals and thus is not a system of records as contemplated by the Privacy Act)
PCC–CZG/WO–2, Office of the Secretary Operating Unit Personnel Files (this system is already covered by the system PCC–OPR–1, Operating Unit Personnel Records)

List of Alphanumerical Changes

The following is a listing of the changes in the alphanumerical designations. The column on the left represents the former designation and the one on the right represents the new designation.

Former	*Present*
PCC–CZG/ADGS–2	PCC/AMSA–2
PCC–CZG/ADRM–1	PCC/AMRM–1
PCC–CZG/ADRM–3	PCC/AMRM–3
PCC–CZG/ADRM–4	PCC/AMRM–4
PCC–CZG/ADTR–1	PCC/AMTR–1
PCC–CZG/CACP–2	PCC/GSCP–2
PCC–CZG/CACU–6	PCC/AMSE–2
PCC–CZG/CACU–8	PCC/AMSE–1
PCC–CZG/CALM–1	PCC/GSLM–1
PCC–CZG/CALS–1	PCC/AMSA–1
PCC–CZG/CALS–5	PCC/AMSA–3
PCC–CZG/CALS–6	PCC/AMSA–4
PCC–CZG/CAPL–1	PCC/GSPL–1
PCC–CZG/CAPL–2	PCC/GSPL–2
PCC–CZG/CAPL–3	PCC/GSPL–3
PCC–CZG/CAPL–4	PCC/GSPL–4
PCC–CZG/CAPL–5	PCC/GSPL–5
PCC–CZG/CAPL–6	PCC/GSPL–6
PCC–CZG/CAPL–7	PCC/GSPL–7
PCC–CZG/CAPL–8	PCC/GSPL–8
PCC–CZG/CAPL–9	PCC/GSPL–9
PCC–CZG/CAPL–10	PCC/GSPL–10
PCC–CZG/CAPL–12	PCC/GSPL–12
PCC–CZG/CAPL–13	PCC/GSPL–13
PCC–CZG/CAPL–15	PCC/GSPL–15
PCC–CZG/CAPL–16	PCC/GSPL–16
PCC–CZG/CAPL–18	PCC/GSPL–18
PCC–CZG/CAPL–19	PCC/GSPL–19
PCC–CZG/CAPR–1	PCC/AEPR–1
PCC–CZG/CAPR–2	PCC/AEPR–2
PCC–CZG/CAPR–3	PCC/AEPR–3
PCC–CZG/CAPR–4	PCC/AMRM–5
PCC–CZG/CAPS–6	PCC/AMRM–6
PCC–CZG/CZPB–1	PCC/PB–1
PCC–CZG/CZPB–2	PCC/PB–2
PCC–CZG/CZPB–3	PCC/PB–3
PCC–CZG/ECCN–1	PCC/ECCN–1
PCC–CZG/ECCN–2	PCC/ECCN–2
PCC–CZG/ECLE–1	PCC/ECLE–1
PCC–CZG/EPCD–1	PCC/GSEP–1
PCC–CZG/EPS–1	PCC/EP–1
PCC–CZG/FVAC–1	PCC/FMAC–1
PCC–CZG/FVAC–2	PCC/FMAC–2
PCC–CZG/FVAC–3	PCC/FMAC–3
PCC–CZG/FVAC–4	PCC/FMAC–4
PCC–CZG/FVAC–5	PCC/FMAC–5
PCC–CZG/FVAC–6	PCC/FMAC–6
PCC–CZG/FVAC–7	PCC/FMAC–7
PCC–CZG/FVAC–8	PCC/FMAC–8
PCC–CZG/FVAC–9	PCC/FMAC–9
PCC–CZG/FVAK–1	PCC/FMAK–1
PCC–CZG/FVAP–1	PCC/FMAP–1
PCC–CZG/FVAP–2	PCC/FMAP–2
PCC–CZG/FVAP–3	PCC/FMAP–3
PCC–CZG/FVAP–4	PCC/FMAP–4
PCC–CZG/FVFI–1	PCC/PR–9
PCC–CZG/FVGA–1	PCC/FMGA–1
PCC–CZG/FVTR–1	PCC/FMTR–1
PCC–CZG/FVTR–2	PCC/FMTR–2
PCC–CZG/FVTR–3	PCC/FMTR–3
PCC–CZG/GE–2	PCC/AE–1
PCC–CZG/GVEO–1	PCC/EO–1
PCC–CZG/GVEO–2	PCC/EO–2
PCC–CZG/GVLR–1	PCC/IR–1
PCC–CZG/GVPR–1	PCC/ADPA–1
PCC–CZG/GVPR–2	PCC/ADPA–2
PCC–CZG/HL–1	PCC/HLIH–2
PCC–CZG/IO–1	PCC/IO–1
PCC–CZG/ISO–1	PCC/GSIS–1
PCC–CZG/MIL–1	PCC/MIL–1
PCC–CZG/MRBLI–1	PCC/MRBL–1
PCC–CZG/MRPA–1	PCC/MRPA–1
PCC–CZG/MRTO–1	PCC/MRTO–1
PCC–CZG/MRTO–2	PCC/MRTO–2
PCC–CZG/OPR–1	PCC/OPR–1
PCC–CZG/OPR–2	PCC/OPR–2
PCC–CZG/PR–1	PCC/PR–1
PCC–CZG/PR–2	PCC/PR–2
PCC–CZG/PR–3	PCC/PR–3
PCC–CZG/PR–4	PCC/IR–4
PCC–CZG/PR–5	PCC/PR–5
PCC–CZG/PR–6	PCC/PR–6
PCC–CZG/PR–7	PCC/PR–7
PCC–CZG/PR–8	PCC/PR–8
PCC–CZG/PR–11	PCC/PR–11
PCC–CZG/SC–1	PCC/GSCS–1
PCC–CZG/SC–2	PCC/GSCS–2
PCC–CZG/SC–3	PCC/GSSP–1
PCC–CZG/SF–1	PCC/HLSF–1
PCC–CZG/SF–2	PCC/HLSF–2
PCC–CZG/TTWT–1	PCC/GSWT–1
PCC–CZG/WO–1	PCC/WO–1

Alphabetical Title Listing of Panama Canal Commission

Notices of Systems of Records

Accounts Payable Disbursement Records, PCC/FMAC–8
Accounts Receivable Records, PCC/FMAC–2
Admeasurer Examination File, PCC/MRPA–1
Appeals, Grevances, Complaints, and Assistance Records, PCC/PB–2
Applications for Exoneration, PCC/AMSE–1
Arrest Record File, PCC/GSPL–13
Biographical Data, PCC/ADPA–1
Canal Protection Division Activity Report Files, PCC/GSCP–2
Canal Commission Awards and Service Contracts Control Records, PCC/FMAC–7
Cardex File-Contraband Violations, PCC/AMSE–2
Cash Audit Files, PCC/FMGA–1
Cash Collection Agents and Subagents, PCC/FMAC–6
Claims Files, PCC/FMAK–1
Complaints Against Policemen File, PCC/GSPL–15
Contractor Employee Payroll Records, PCC/ECCN–2
Convict Files, PCC/GSPL–4
Delegation of Authority for Procurement, PCC/FMAC–5
Detective Confidential Files, PCC/GSPL–3
Disability Relief, Retirement and Group Supplementary Life Insurance Records, PCC/PR–1
Embezzlements, Burglaries, and Cash Shortages, PCC/FMAC–1
Emergency Preparedness Records (Civil Defense/Emergency Management), PCC/ESEP–1
Employee Application for Outside Employment, PCC/AMSA–2
Employee Benefits Records, PCC/PR–2
Employees' and Dependents' Travel Orders, PCC/AMTR–1
Equal Employment Opportunity Complaint File, PCC/EO–2
Expert and Consultant Records, PCC/GSSP–1
Fingerprint File, PCC/GSPL–7
Freedom of Information Act Requests for Records, PCC/AMRM–4
General Files of the Panama Canal Commission, AMRM–1
General Identification, Photo-Identification, and Purchase Authority Records, PCC/AMSA–1
Grievances, Appeals, and Adverse Actions Records, PCC/IR–2
Housing Complaints File, PCC/GSCS–2
Housing Files, PCC/GSCS–1
Incentive Awards Program Files, PCC/PR–9
Industrial Accident Prevention Supervisor/Unit Awards File, PCC/HLSF–1
Industrial Health Records, PCC/HL–1
Informant Name File, PCC/GSPL–9
Injury Compensation Payroll Records, PCC/FMAP–3
Internal Revenue Service Notice of Levy Files, PCC/FMTR–2
Land Utilization Records, PCC/AMSA–3
Law Enforcement Case Report Files, PCC/GSPL–1
Marine Accident Reference CArds, PCC/MRTO–1
Marine License Files, PCC/MRBL–1
Master Name File, PCC/GSPL–10

Merit System Recruiting, Examining, and Placement Records, PCC/PB–1
Minority Group Designator (MGD) Records, PCC/PR–11
Minority Group Designator Statistical Data, PCC/EO–1
News Morgue Records, PCC/IO–1
Operating Unit Employment Inquiry Files, PCC/OPR–2
Operating Unit Personnel Records, PCC/OPR–1
Panama Canal Commission Board of Directors, PCC/WO–1
Panama Canal Commission Board of Directors Biographical and Correspondence Files, PCC/EP–1
Panama Canal Commission Library Registration Record, PCC/GSLM–1
Payroll Deductions, PCC/FMAP/AC–4
Payroll Master File for Panama Canal Commission Employees, PCC/FMAP–1
Payroll System for Vessel Employees, PCC/FMAP–2
Pending Detective Investigation Records, PCC/GSPL–8
Personal Data Records, PCC/PR–3
Personnel Information System, PCC/PR–7
Personnel Investigation Records, PCC/PB–3
Personnel Security Files, PCC/GSIS–1
Pilot Workload Statistics, PCC/MRTO–2
Plumbing and Welding License Files, PCC/ECCN–1
Police Headquarters Confidential File, PCC/GSPL–2
Police Photo Files, PCC/GSPL–6
Poor Risk/Delinquent Citation/Warrant File, PCC/GSPL–19
Post Office Boxholder Records, PCC/AMRM–5
Postal Claims and Inquiries, PCC/AMRM–6
Presentence and Pre-Parole Investigation Reports, PCC/AEPR–2
Prisoner Property Record, PCC/GSPL–18
Prisoner Record Cards, PCC/GSPL–5
Privacy Act Requests Records, PCC/AMRM–3
Probation and Parole Unit Child Custody Reports, PCC/AEPR–1
Probation and Parole Unit Statistical File, PCC/AEPR–3
Protocol Unit Operational Files, PCC/ADPA–2
Quarterly Report of Employee Union Dues Deductions, PCC/IR–1
Recruiting and Placement Records, PCC/PR–5
20/30/40-Year Safety Key Awards Files, PCC/HLSF–2
Statements of Employment and Financial Interest, PCC/AE–1
Supension of Check Cashing Privileges Files, PCC/FMTR–3
Telephone Exchange Directory, PCC/ECLE–1
Termination of Employment Actions Records, PCC/FMTR–1
Traffic Accident Reports, PCC/GSPL–16
Training and Employee Development Records, PCC/PR–6
Trust Fund Records, PCC/FMAC–3
Unnegotiated Checks Over One Year Old, PCC/FMAC–9
U.S. Army Element, Panama Canal Commission Military Administration System, PCC/MIL–1
U.S. Civil Service Commission systems applicable to the Panama Canal Commission General Personnel Records; Retirement, Life Insurance, and Health Benefits Records Systems (See PCC/PR–8)
U.S. Government Vehicle Operator's Identification and Material Handling Card Application Files, PCC/AMSA–4
Vessel Employee Records, PCC/GSWT–1
Youth Unit Name Index File, PCC/GSPL–12

Prefatory Statement of General Routine Uses

(35 CFR Part 10, Appendix A)

Information about an individual which is maintained in any system of records under the control of the Panama Canal Commission is subject to disclosure, as a routine use of such information, to any of the following persons or agencies under the circumstances described:

1. Information indicating a violation or potential violation of law (whether civil, criminal, or regulatory in nature, and whether involving a statute or regulation or a rule or order issued pursuant thereto) may be referred to the federal, state, local, foreign, or international agency charged with investigating or prosecuting such violations or charged with implementing or enforcing the particular statute, or regulations, rule, or order, which is pertinent thereto.

2. Information which has a bearing on matters which may be in dispute may be disclosed in the course of presenting evidence or argument to a court or administrative tribunal, a judicial official, or counsel for a party in connection with litigation or administrative proceedings in which the agency, or its officers or employees, are or may become involved.

3. Information may be provided to persons or agencies from whom information is solicited, to the extent necessary to elicit facts which may be relevant to a financial audit or an agency decision to hire or retain an employee, issue a security clearance, award a contract, grant a license, or otherwise provide a benefit or incur an obligation.

4. Information may be disclosed to a federal agency, in response to its request in a particular case or in a category of cases, in connection with that agency's (a) decision in a personnel matter; (b) financial audits and accounting; (c) issuance of a security clearance; (d) investigation of an individual employed or formerly employed by the Panama Canal Commission (or its predecessors); or (e) decision to award a contract, grant a license, or otherwise provide a benefit or incur an obligation.

5. Information may be supplied in response to an inquiry from a Member of Congress on behalf of an individual or, at any stage of the legislative coordination and clearance process, to the Office of Management and Budget in connection with the review of private relief legislation.

6. Information which has a bearing on the qualifications of professional personnel (such as architects, attorneys, engineers, medical practitioners, pilots, and teachers) who have been employed by the agency or have had professional dealings with the agency may be provided to the appropriate authorities such as professional licensing and certifying boards and grievance committees.

7. To the extent necessary for implementation of the Panama Canal Treaty of 1977 and related agreements, information may, upon approval by the Agency Records Officer (Chief, Administrative Services Division) or that official's designee, be disclosed to officials of the Government of the Republic of Panama and to U.S. Government agencies which, under the Treaty, assumed functions formerly performed by the Panama Canal Company or the Canal Zone Government.

PCC/ADPA–1

SYSTEM NAME:

Biographical Data, PCC/ADPA–1

SYSTEM LOCATION:

Protocol Office, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Administrator, Deputy Administrator, Administrator's staff, and members of their families; Board of Directors; local military and Diplomatic Corps officials; visiting officials including Congressional and high ranking military personnel; Secretary of the Army and members of his staff; local Panama Canal Commission employees; local businessmen and officials; Residents' Advisory Committee officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on individuals including names, identification numbers, dates of birth, number of children and their names, education, honors bestowed, telephone numbers, addresses, job titles, marital status, citizenship, employing unit, photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611 and 3614 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General biographical data may be provided to interested members of Congress, diplomatic corps, public media, etc., consistent with official protocol functions. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Standard 8 by 10½ inch paper.

RETRIEVABILITY:

Filed and indexed by name.

SAFEGUARDS:

Records maintained in lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained indefinitely. Forwarded to Agency Records Center for disposition according to established procedures and where applicable to libraries or the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Aide to the Administrator, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

PCC/ADPA-2

SYSTEM NAME:

Protocol Unit Operational Files, PCC/ADPA-2.

SYSTEM LOCATION:

Protocol Office, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Residents' Advisory Committee officers; Panama Canal Commission employees and officials; local officials; officers of local organizations; official visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Telephone numbers; addresses; photographs; stenographic transcriptions of Residents' Advisory Committee meetings, recordings, speeches, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To establish appointment schedules, contact protocol counterparts in other agencies. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Standard 8 by 10½ inch paper, index cards.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records maintained in lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained indefinitely. Forwarded to Agency Records Center for disposition according to established procedures, and where applicable to libraries and the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Aide to the Administrator, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

PCC/AE-1

SYSTEM NAME:

Statements of Employment and Financial Interest, PCC/AE-1.

SYSTEM LOCATION:

Office of Executive Administration, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees designated in 35 CFR 255.735-72 of the Panama Canal Commission, and special Government employees as provided in 35 CFR 255.735-80.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports by designated employees of their outside employment and financial interests, as required by law, and regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 201, E.O. 11222, E.O. 11590 (35 CFR 255.735-71/80); 22 U.S.C. 3611, 3622, 3652-3654 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To determine whether the designated employees have unacceptable conflicts of interest with relation to their U.S. Government employment. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Papers in sealed envelopes.

RETRIEVABILITY:

Manually by name of individual.

SAFEGUARDS:

File cabinet with combination lock. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

3 years and disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration

Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From employee on whom record is maintained, and from investigations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is kept in systems PCC/GSPL–1, 2 or 3 and is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/AEPR–1

SYSTEM NAME:

Probation and Parole Unit Child Custody Reports, PCC/AEPR–1.

SYSTEM LOCATION:

Probation and Parole Unit, U.S. District Court, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parent or custodian of minor child when custody of the child is contested.

CATEGORIES OF RECORDS IN THE SYSTEM:

All background information available to the Probation and Parole Officer that would be helpful in determining appropriate custody of the child.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Judicial request under 7 Panama Canal Code 2807 or 8 Panama Canal Code 338, 76A Stat. 647, 689; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to officials of U.S. District Court for the District of the Canal Zone. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Reports 8 by 10½ inches.

RETRIEVABILITY:

Alphabetized.

SAFEGUARDS:

Records maintained in metal file cabinets with access by Probation Office personnel only.

RETENTION AND DISPOSAL:

Maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Probation and Parole Officer, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21.

PCC/AEPR–2

SYSTEM NAME:

Presentence and Pre-Parole Investigation Reports, PCC/AEPR–2

SYSTEM LOCATION:

Probation and Parole Unit, U.S. District Court, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons convicted of crimes and referred to the Probation and Parole Unit for investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

All background information available to the Probation Officer, including full identity of the person and his family, police history, employment history, financial status, military history, and details of the offense in which the person was involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 3651–53, 3655; 6 Panama Canal Code 4491–92, 6621–25 (76A Stat. 533, 558); 22 U.S.C. 3831 and 3852 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to officials of U.S. District Court for the District of the Canal Zone and Administrative Office of the U.S. Courts. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Typed reports and printed forms 8 by 10½ inches.

RETRIEVABILITY:

Indexed by name and kept in alphabetized individual jackets.

SAFEGUARDS:

Records maintained in metal file cabinets with access by Probation Office personnel only.

RETENTION AND DISPOSAL:

Maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Probation and Parole Officer, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21.

PCC/AEPR–3

SYSTEM NAME:

Probation and Parole Unit Statistical File, PCC/AEPR–3

SYSTEM LOCATION:

Probation and Parole Unit, U.S. District Court, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons convicted of crimes and referred to the Probation and Parole Unit for investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, age, residence, category of crime and Court disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 and 3852 (Supp. III 1979): Article XI of the Panama Canal Treaty of 1977; and Federal Probation Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to officials of the U.S. District Court for the District of the Canal Zone and Administrative Office of the U.S. Courts. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form 5 by 8 inches.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records maintained in metal file cabinets with access by Probation Office personnel only.

RETENTION AND DISPOSAL:

Maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Probation and Parole Officer, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the Procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21.

PCC/AMRM–1

SYSTEM NAME:

General Files of the Panama Canal Commission, PCC/AMRM–1

SYSTEM LOCATION:

Records Management Branch, Panama Canal Commission, Administration Building, Balboa Heights, Republic of Panama

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual who are the subject of correspondence or who correspond with the Office of the Administrator and staff offices on a variety of subjects related to the operation, maintenance, and protection of the Panama Canal.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files retrievable by reference to individuals include records on subjects such as eligibility to engage in private business, purchase goods and services, and use Canal facilities; licenses and permits in connection with utilization of land, water, resources and facilities; Congressional inquiries about or on behalf of individuals; biographical data on former Governors of the Canal Zone; certificates of good conduct; contracts with individuals, reports of Court dispositions of cases; Coroner reports; and inquiries and answers on Canal operations, laws and regulations pertaining to the Panama Canal Commission and policies related thereto, generally.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; 44 U.S.C. 3101 and 3102.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders or on backers and card indexes.

RETRIEVABILITY:

Filed by subject subdivided alphabetically by name, or filed alphabetically by name only.

SAFEGUARDS:

Stored in metal file cabinets in file room locked when not in use in a building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Certificates of good conduct, 6 months; eligibility files, 3 years after last entry; general inquiries and answers, 3 years. Other transferred to Agency Records Center after 8 years and retained permanently. General files prior to 1935 are stored in National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part. 10.

RECORD SOURCE CATEGORIES:

Subject individuals, Canal officials, and information from records.

PCC/AMRM–3

SYSTEM NAME:

Privacy Act Requests Records, PCC/AMRM–3.

SYSTEM LOCATION:

Records Management Branch, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested personal information from records systems of the Panama Canal Commission under provisions of the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to process requests made under the Privacy Act of 1974, and to provide information for compiling an annual report for The Office of Management and Budget as required by the act. Files contain correspondence, documents, and file material references related to the receipt, processing and final disposition of requests received under the Privacy Act of 1974. File material under request is normally retained by the system manager of the system from which the information is requested.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; logs; index cards.

RETRIEVABILITY:

Documentation on requests processed by Privacy Act Staff filed by log number and retrievable by name. Documentation on requests processed by system managers field chronologically.

SAFEGUARDS:

Records maintained in file cabinets in building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained 6 years after final disposition of case, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records Management Branch, Administrative Services Division,

Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager. Rules published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained and from officials making determinations under the act.

PCC/AMRM-4

SYSTEM NAME:

Freedom of Information Act Requests Records, PCC/AMRM-4.

SYSTEM LOCATION:

Records Management Branch, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested copies of Panama Canal Commission records under provisions of the Freedom of Information Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to process requests for information from records under the Freedom of Information Act, and to provide annual reports to Congress as required by the act. Files will normally contain correspondence, documents, and file material references related to the receipt, processing and final disposition of requests received under the Freedom of Information Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; logs; index cards.

RETRIEVABILITY:

Filed by log number; indexed by name.

SAFEGUARDS:

Records maintained in metal file cabinet in building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained 6 years after final disposition of case, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building Balboa Heights, R. P. Rules published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual requesting information; and from officials making determinations under the act.

PCC/AMRM-5

SYSTEM NAME:

Post Office Boxholder Records, PCC/AMRM-5.

SYSTEM LOCATION:

Postal Assistance Unit at Bldg. 446, Albrook and Bldg. 8040, Margarita, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who obtained boxholder service at former Canal Zone Post Offices. Persons who gave notice of change of address.

CATEGORIES OF RECORDS IN THE SYSTEM:

The boxholder or recipient's name, employee identification number, residence, Post Office box number, and the names of persons other than the boxholder who were authorized to receive mail at the assigned box or station; APO Box number, forwarding address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3741 (Supp. III 1979); and Article III and Annex of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Individual cards.

RETRIEVABILITY:

Originals filed numerically by Box number, and cross-referenced by name, duplicates filed alphabetically in the unit master directory.

SAFEGUARDS:

Maintained in metal file drawers. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed two years after box is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building Balboa Heights, R. P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual boxholder.

PCC/AMRM-6

SYSTEM NAME:

Postal Claims and Inquiries, PCC/AMRM-6

SYSTEM LOCATION:

Postal Assistance Unit, Albrook AFS (Bldg. 446) and Margarita (Bldg. 8040), Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting tracing of undelivered mail or parcels, or

presenting claims for loss or damage of registered mail or insured parcel post.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record contains the information necessary to properly examine, prepare, process and adjudicate claims for loss or damage of registered mail or insured parcel post or tracing of ordinary articles, including: names and addresses of senders and addresses, date of mailing, description of articles value, the registration, insured, or certified number or description of an unnumbered ordinary article, purpose of claim, post office disposition and/or any other pertinent information relating to the claim or inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3741 (Supp. III 1979), and Article III and Annex of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referred to Foreign Postal Administrations or law enforcement agencies when applicable. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Individual file folders.

RETRIEVABILITY:

Filed alphabetically by name of addressee.

SAFEGUARDS:

Maintained in metal lockable cabinets or desk drawers. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed two years after disposition of claims.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The sender, addressee, and, as applicable, the Postal Service or Administration officials of the country of origin or destination.

PCC/AMSA-1

SYSTEM NAME:

General Identification, Photo-Identification and Purchase Authority Records, PCC/AMSA–1

SYSTEM LOCATION:

Employee Documentation Unit, Building 5140, Diablo, Republic of Panama and Building 8040, Margarita, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have applied for Panama Canal Commission general identification, photo-identification and/or purchase authority cards, i.e., employees and annuitants of the Panama Canal Commission (including its predecessor agencies) dependents and other individuals who reside in Commission housing; employees of the United States District Court of the Canal Zone and the U.S. Attorney's Office; employees of private companies (contractors) or other organizations; visitors of U.S. Commission employees and certain other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicants name, identifying number, home address, postal address, birthdate, citizenship, employment status and/or employing unit, position title, marital status, purchase authority status, medical privilege status, work and home telephone number. Name, date of birth, relationship, physical impairments and citizenship of dependents of applicant, and history of identification cards issued. Subsystem containing photomat cards reflecting card holder's name, sponsor's name, date of birth of card holder, identification number, citizenship, employing agency or agency retired from, separation date, card expiration date, residence address and card control number. Computer listings reflecting name, identification number, tenure, duty station, social security number, leave balance, gross pay and social security payments to the Government of Panama, of active Panama Canal Commission employees eligible for medical benefits. Name, identification number, passport number, date of birth, birthplace, nationality of Panama Canal Commission employees and their dependents who have been issued official U.S. passports. For persons who have been issued visitor identification cards, photocopies of their passport, tourist card, and their sponsor's Commission identification card are maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Articles III and VIII of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to officials of the U.S. Embassy, U.S. Armed Forces and the Government of Panama, with a need to know. See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, standard photomat cards and paper records.

RETRIEVABILITY:

Indexed by name and identification number.

SAFEGUARDS:

Records maintained in locked metal filing cabinets when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed six years after inactive, cancelled or termination of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Staff and Administrative Support Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in notification procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual, U.S. Embassy and Data Processing.

PCC/AMSA-2

SYSTEM NAME:

Employee Application for Outside Employmnent, PCC/AMSA-2.

SYSTEM LOCATION:

Administrative Services Division, Administration Building, Balboa Hights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees who have applied for permission to engage in outside employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, name of outside employer, location of outside employment, number of hours employed weekly, nature of work performed, beginning and ending dates of outside employment, and conditions placed on employee concerning outside employment permission. Also may include letters from the Government of Panama stating there is no objection to the proposed employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3622 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; E.O. 11222 of May 8, 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Released to Internal Revenue Service and government of Panama officials upon request to inform them which employees engage in outside employment. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form 8 by 10½ inches.

RETRIEVABILITY:

Filed by expiration date. Separate index maintained by name.

SAFEGUARDS:

Lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Minimum of 5 years after expiration of permit. Disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Staff and Administrative Support Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual to whom application pertains.

PCC/AMSA-3

SYSTEM NAME:

Land Utilization Records, PCC/AMSA-3.

SYSTEM LOCATION:

Administrative Services Division, Panama Canal Commission, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have been issued revocable licenses to occupy or use tracts of land in the Canal area for residential, commercial, agricultural, recreational or boat repair purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records showing the status of land licenses issued containing information such as the following:

Name of licensee, street and postal address, date of birth, citizenship, identification number, type of employment, photographs, signature, dependent information, police records, and letters of complaint (if any). Also contains signed copies of licenses, boundary information, area maps, rental rates, census reports, and types of structures on the site and conditions of licensing and date of revocation, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; and Article IV of the Agreement in Implementation of Article III of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released to such agencies as the Bureau of Census, Office of Personnel Management and the Internal Revenue Service. Information may also be disclosed to local U.S. military officials when such licenses are located adjacent to or within areas used by the military. Information may also be disclosed to Government of Panama officials. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

10 by 12 inch file folders, and cardex files.

RETRIEVABILITY:

Filed by name, recovered manually.

SAFEGUARDS:

Records maintained in lockable file. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained as a permanent record.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Staff and Administrative Support Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

PCC/AMSA-4

SYSTEM NAME:

U.S. Government Vehicle Operator's Identification and Material Handling Card Application Files, PCC/AMSA-4.

SYSTEM LOCATION:

Employee Documentation Unit, Bldg. 5140, Diablo, Republic of Panama; and Data Processing Division, Administration Building, Balboa Heights, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who apply to the Panama Canal Commission for Government Vehicle Operator's Licenses or for Material Handling Cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms containing name, identification number, position, date of birth, place of birth, citizenship, color of hair, color of eyes, height, weight, employment information, qualification statements. Letters of revocation, suspension, or cancellation, and/or medical evaluation material. Computer-produced list of current license-holders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR Part 930, Subpart A; Panama Canal Personnel Manual, Chapter 930; 22 U.S.C. 3611 (Supp. III 1979); 40 U.S.C. 491; Article III of the Panama Canal Treaty of 1977; and Article XIV of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; computer printouts; magnetic disks.

RETRIEVABILITY:

Retrievable by name.

SAFEGUARDS:

Paper records maintained in lockable file cabinet. Magnetic disks stored in locked room when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Application forms and related records destroyed 3 years after expiration of license or termination of employee or other recision of authority. Computer printouts held up to three months after printing and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Employee and Cargo Documentation Section, Panama Canal Commission, APO Miama 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained; supervisors.

PCC/AMSE-1

SYSTEM NAME:

Application for Exoneration, PCC/AMSE-1

SYSTEM LOCATION:

Cargo Documentation Unit in Building 5140, Diablo, R.P. and Building 1105, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who apply for exoneration of customs duty to import goods into the Republic of Panama.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identity number, citizenship, residence, place of employment, signature, and commodity description.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; and Article XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form—8¼" by 13"

RETRIEVABILITY:

By name and number.

SAFEGUARDS:

Standard file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 3 years.

SYSTEM MANAGER(S):

Chief, Employee and Cargo Documentation Section, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Prcedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual applicant.

PCC/AMSE-2

SYSTEM NAME:

Cardex File—Contraband Violations, PCC/AMSE-2

SYSTEM LOCATION:

Cargo Documentation Unit in Bldg. 5140, Diablo, R.P. and Bldg. 1105, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons reported to be, or suspected of involvement in activities which are violations of treaty provisions governing the importation, purchase, use, transfer of goods or services obtained by Commission employees, dependents, and other authorized persons; including but not limited to transfer of duty free goods and services into the Republic of Panama without proper Panama Customs clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, number, address, place of employment, case numbers, charge or violation, administrative or court action taken, and name of investigator. Other information as may be uncovered by investigating officers, including the name, dates and places of violations, names of accessories etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; and Article XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure as required to U.S. military component investigators, U.S. District Court officials, and Panamanian Customs officials having an interest in such information in connection with law enforcement or regulatory procedures. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards, logbooks (chronological), case reports and supporting documentation maintained by the Cargo Documentation Unit which are accessible by the cardex system.

RETRIEVABILITY:

Accessible by name and case number on cardex forms. Backup data, including case reports accessed by cardex designators, otherwise filed by investigator's name.

SAFEGUARDS:

Card file drawers. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Employee and Cargo Documentation Section, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/AMTR-1

SYSTEM NAME:

Employees' and Dependents' Travel Orders, PCC/AMTR-1

SYSTEM LOCATION:

Transportation Branch, Building 5140, Diablo Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and designated dependents of Panama Canal Commission and other agencies whose travel arrangements are performed by the Transportation Branch of the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain traveler's names, relationship to employee, identification number, occupation, dates and places of birth, origin and destination of travel as well as other pertinent travel information required to complete United States Transportation request and United States Government Bills of Lading.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701-42 and 5924, and such other authorities as are cited in 572.1-1 and 1-2, PCPM; 22 U.S.C. 3611, 3647 and 3671 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

U.S. Government agencies, commercial carriers, U.S. and foreign customs, Immigration and diplomatic personnel, and others with a need to know; and for use in adjudicating claims relating to employee travel. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders and index cards.

RETRIEVABILITY:

Indexed by employee's name and travel order numbers.

SAFEGUARDS:

Records maintained in file cabinets. Office is locked and protected by security alarms after office hours—access and use of records restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transportation Branch, Panama Canal, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or he Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, employing unit, and by the Personnel Bureau, Panama Canal Commission as necessary.

PCC/ECCN-1

SYSTEM NAME:

Plumbing and Welding License Files, PCC/ECCN-1

SYSTEM LOCATION:

Construction Management Branch (Plumbing License Files), Building 29-X, Balboa, Republic of Panama; Industrial Division (Welding License Files), Building 5082, Mt. Hope, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have plumbing licenses on file with the Construction Management Branch; and welding licenses on file with the Industrial Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

License numbers, name of licensee, date license issued, test results, category of license, name of certification board or examiner.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; 35 CFR Parts 251 and 253.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

License information routinely released to contractors, employers, and license examining and review boards. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by type and number of license.

SAFEGUARDS:

Records maintained in file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

No retention and disposal schedule established. Actively maintained as long as licensee is known to be actively engaged in employment. Retained permanently for record purposes.

SYSTEM MANAGER(S) AND ADDRESS:

For plumbing license file, Chief, Construction Management Branch, Panama Canal Commission, APO Miami 34011. For welding license file, Chief, Industrial Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration

Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Examining officials and licensee.

PCC/ECCN–2

SYSTEM NAME:

Contractor Employee Payroll Records, PCC/ECCN–2

SYSTEM LOCATION:

Construction Management Branch, Bldg. 29–X, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of contractors working on Panama Canal Commission contracts when such employees are working in the Canal area and being paid hourly wages.

CATEGORIES OF RECORDS IN THE SYSTEM:

The contract number, contractor, employee's name, cedula number, hourly rate of pay, hours worked, total hours worked, total amount paid and other information as required to assure contractor's compliance with the Hours and Safety Standards Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); 40 U.S.C. 327 et seq.; Article III of the Panama Canal Treaty of 1977, and Articles IX and XI of the Agreements in Implementation of Article III of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

US Department of Labor, US Court of Claims, US Army Corps of Engineers Board of Contract Appeals, insurance companies (sureties), GOP Department of Labor, US Embassy and others as required to assure contractor's compliance with above Acts regarding minimum wage, and maximum daily and weekly hours of work. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders.

RETRIEVABILITY:

Individual pay data and hours of work retrieved chronologically by date.

SAFEGUARDS:

Records maintained in file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained by contracting officer for one year after final payment of contract, then transferred to Agency Records Center. Destroyed three years later unless claim pending.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Construction Management Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Provided by the contractor.

PCC/ECLE–1

SYSTEM NAME:

Telephone Exchange Directory, PCC/ECLE–1

SYSTEM LOCATION:

Electrical Division, Building 69, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission telephone service subscribers, including persons or ogranizations requesting residential, office, and/or pay phone installations, directory listings, repair services, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employee identification and/or customer number, of all persons and organizations having listed and unlisted telephone numbers. Dates of installation, work order numbers, types of equipment and numbers of installation, location, etc. are also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977 and Annex thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system is used to compile listings used to produce the Panama Canal Commission Telephone Directory (available to the public), answer requests for telephone directory assistance etc. Telephone numbers which are requested to be kept unlisted, while a part of the system, are maintained under lock and key. Such numbers are only divulged to the party to whom they pertain, and only upon positive face-to-face identification. Information from this system may also be used to provide assistance to INTEL for the collection of outstanding charges for long distance services. For other routine uses see general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Information maintained on printed cards.

RETRIEVABILITY:

Filed by name and telephone district.

SAFEGUARDS:

Cards maintained in lockable revolving files.

RETENTION AND DISPOSAL:

Maintained for five years after individual cancels or terminates service, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Electrical Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From employee on whom record is maintained.

PCC/EO–1

SYSTEM NAME:

Minority Group Designator Statistical Data, PCC/EO–1

SYSTEM LOCATION:

Office of Equal Opportunity and Data Processing Division, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active employees of the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

A minority group designator, together with information in the payroll system of the Panama Canal Commission, including such information as name, employee identification number, date hired, roll and gang, position number, occupation, pay level, base rate, work week, social security code and number, residence, citizenship, sex, marital status, birth date, Federal service date, PCC service date and employee status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 55; 22 U.S.C. 3611 (Supp. III 1979); 42 U.S.C. 2000 e–16; E. O. 11478 of August 8, 1969; Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A. The System Manager is prohibited, by the provisions of 29 CFR 1613.302, from disclosing minority group data in the system except in the form of gross statistics (except insofar as an individual is entitled, under the Privacy Act, to access to information pertaining to him which is contained in the system.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Magnetic tapes or discs, computer printouts and Panama Canal forms No. 2823, used for computer input.

RETRIEVABILITY:

By any or all of the categories of records in the system.

SAFEGUARDS:

Printouts containing names or other personal identifies together with the minority group designator code maintained in locked file cabinet and accessible only to the Director of the Office of Equal Opportunity or that official's designated representative. Magnetic tapes stored in locked rooms when not in use; access and use restricted to authorized personnel. Printouts will be produced only upon written request from the Director of the Office of Equal Opportunity.

RETENTION AND DISPOSAL:

Printouts retained up to five years and then destroyed. Records on magnetic tape retained until six weeks after the end of the calendar year in which the employee terminates. Tapes and discs erased and reused. Panama Canal forms No. 2823 destroyed after minority group information entered in computer and checked for accuracy.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Equal Opportunity, Office of Equal Opportunity, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R. P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of the officials designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

Rules governing how an individual may rquest the amendment of any information about him in this system are published in 35 CFR 10.12.

RECORD SOURCE CATEGORIES:

Minority group designator code: A visual identification of the employee's race and ethnic category made by the employee's supervisor for those employed as of June 30, 1977 and, for those entering service after June 10, 1977, by staff of the Employee Processing Unit of the Personnel Bureau. All other data: Subject employee, personnel actions forms (SF 50), employing unit, time reports, computer-generated and manual calculations from varied input data.

PCC/EO–2

SYSTEM NAME:

Equal Employment Opportunity Complaint File, PCC/EO–2

SYSTEM LOCATION

Office of Equal Opportunity, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment who complain of discrimination based on race, color, sex, age, religion, national origin, or physical and mental handicap.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Pre-complaint record, consisting of informal complaint, final report from the Equal Employment Opportunity Counselor, and related documents.

B. Investigative file, consisting of formal complaint; acceptance of formal complaint; sworn statements from complainant, witnesses, and alleged discriminatory official(s), environmental survey for comparison purposes (depersonalized); and summary made by Investigator, and related documents.

C. Complaint file, consisting of proposed disposition of complaint, transcript of EEO hearing, hearing examiner's recommended decision, final decision by agency head, documents forwarded to the Office of Review and Appeals of the Equal Employment Opportunity Commission and the Commissioners, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2000e–16; 5 U.S.C. 554; E.O. 11478 of August 8, 1969; E.O. 11590 of April 23, 1971; 22 U.S.C. 3611 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed to employees of the Panama Canal Commission, the Equal Employment Opportunity Commission and U.S. Courts in connection with their oversight responsibilities under the law. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of complainant.

SAFEGUARDS:

Stored in locked file cabinets; office locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained in office for 2 years after final disposition of case and transferred to Agency Records Center for destruction 4 years after final disposition of case. Tapes of EEO hearings are erased and reused.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Equal Opportunity, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. See Chapter 713 of Panama Canal Personnel Manual (PCPM 713).

RECORD ACCESS PROCEDURES:

Requests should be addressed to the System Manager. Investigatory records are not released until investigation has been completed. Hearing records are not released until final decision has been made.

CONTESTING RECORD PROCEDURES:

See Panama Canal Personnel Manual 713.

RECORD SOURCE CATEGORIES:

Complainant; individuals involved in complaint; other witnesses; investigator; examiner; and officials making determinations in the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/EP-1

SYSTEM NAME:

Panama Canal Commission Board of Directors Biographical and Correspondence Files, PCC/EP-1

SYSTEM LOCATION:

Office of Executive Planning, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present members of the Panama Canal Commission Board of Directors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses, newspaper clippings, personal resumes, biographies and official correspondence between Commission officials and board members. May also include other information as may be provided by Office of Executive Planning in the process of routine responses to inquiries by Board of Directors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3612 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE: 7

Memorandums, letters, newspaper clippings etc. Maintained in standard folders.

RETRIEVABILITY:

Filed by name of board member.

SAFEGUARDS:

Lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Executive Planning, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R. P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, public media and protocol sources.

PCC/FMAC-1

SYSTEM NAME:

Embezzlements, Burglaries, and Cash Shortages, PCC/FMAC-1.

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission employees and former employees under investigation for embezzlements, burglaries, and cash shortages.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records collected and maintained in connection with investigations of embezzlements, burglaries, and cash shortages, such as, police reports, audit reports, statements by individuals involved and their employers, decisions made about liability and responsibility, statements of actions taken to recover, and court decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 502-6, 1341-58, 1381-93, 76 A Stat. 428-29, 458-63; 5 U.S.C. 5511-12; 22 U.S.C. 3611 and 3721 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to the General Accounting Office for decision on responsibility for losses sustained and method of recovery or forgiveness and to the Office of Personnel Management for recovery from retirement annuities or contributions. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Stored in locked desk in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Employers, agents, investigators, witnesses, and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information is this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/FMAC–2.

SYSTEM NAME:

Accounts Receivable Records, PCC/FMAC–2

SYSTEM LOCATION:

Agents Accounts Branch, Bldg. 38, Balboa, Republic of Panama; Panama Canal Commission, 4400 Dauphine St., New Orleans, Louisiana; and Data Processing Division, Administration Building, Balboa Heights, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals billed by the former Canal agencies for services and purchases, and individuals billed by the Panama Canal Commission for services, housing, etc. Included are: all former employees of the Canal agencies, and all present and former employees of the Commission, employees and active duty personnel of U.S. military commands; employees of other U.S. Government agencies, including U.S. Embassy and State Department personnel located in the Republic of Panama, Civil Service annuitants and all other persons having charges or unpaid balances payable to the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to support and effect customer billings, collections, and credit standing, including customer listings and data files (name, address, account number and balance, roll and gang, history of debit and credit transactions, etc), charge account applications, transaction detail and analysis and statistical accumulations, active and inactive credit accounts, schedules of advance payments and security deposits, and account written off. Information relates to such charges as former retail store and storehouse sales, hospital services, other services provided by the former Canal agencies, and housing, electricity, etc., currently provided by the Commission to DoD personnel and other individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5511–14; 22 U.S.C. 3721 (Supp. III 1979); 31 U.S.C. 65 et seq. and 951–3; 42 U.S.C. 2651–3; 44 U.S.C. 3101; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to General Accounting Office for audit and collection assistance; Department of Justice for collection assistance; Internal Revenue Service for determination of tax liabilities; Veterans Administration for its administration of laws pertaining to veterans; and other U.S. Government organizations, private employers, labor unions, lending and credit institutions, foreign consulates and embassies, foreign governments, insurance carriers, attorneys, courts, and executors of estates for collection assistance, credit information, offset of accounts receivable against amounts due customers, and possible litigation. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in folders; index cards; magnetic tapes/disks and punched cards; computer printouts.

RETRIEVABILITY:

Paper records filed or retrievable alphabetically by name; information retrieved from computer by customer/account number.

SAFEGUARDS:

Paper records filed in locked and unlocked metal file cabinets, shelf files, tub files, desks, and table tops in building locked when not in use. Magnetic tapes/disks and punched cards filed in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Paper records destroyed five years after account closed, except those pertaining to accounts written off (destroyed after fifteen years) and customer listings (destroyed when superseded by new listings). Information retained on computer for one year after closing of account. Retention period pending further discussion with GSA/NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Units providing chargeable services, billing offices, collection agents, subject individuals, officials authorized to forgive debts and to authorize adjustments of existing charges, and offices making inquiries or to which inquiries are directed.

PCC/FMAC–3 ·

SYSTEM NAME:

Trust Fund Records, PCC/FMAC–3.

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners in Commission penal facilities; and estates escheated to the former Canal Zone Government by court order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on funds held, including earnings for persons held in detention or institutionalized and incapable of handling their own affairs. The records show the beneficiary's name, amounts received and earned, dates received and earned, account and receipt.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611, 3721 (Supp. III 1979); 31 U.S.C. 65 et seq.; Articles III and XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information is authorized to administrators of the subject funds, including the Public Administrator, for use in the performance of their duties. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in locked desk in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Fund administrators and agent cashiers.

PCC/FMAC-4 (See PCC/FMAP/AC-4) PCC/FMAC-5

SYSTEM NAME:

Delegation of Authority for Procurement, PCC/FMAC-5.

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission personnel authorized to procure and/or approve payments, and personnel of the District Court and other government agencies that approve payments and are made by the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to show individuals and positions authorized to procure goods or services and approve disbursements. Records contain such information as name; organization; title; type of authority; dollar limitations; payment authorization and limitations; letters of additions, deletions and revisions; and sample signatures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); 31 U.S.C. 65 et seq.; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to officials of the District Court and other government agencies for which the Panama Canal Commission makes disbursements. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards and papers in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in locked desk in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed 10 years after authorization cancelled or obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Officials of the Canal agencies and subject individuals.

PCC/FMAC-6

SYSTEM NAME:

Cash Collection Agents and Subagents, PCC/FMAC-6

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees responsible for handling cash.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to identify personnel responsible for cash, their location, the authorized amount of their cash banks, and limitations as to the use of the banks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3721 (Supp. III 1979); 31 U.S.C. 65 et seq.; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to insurance companies for bonding purposes. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records.

RETRIEVABILITY:

Filed by agent cashier number and retrievable by name.

SAFEGUARDS:

Stored in locked desks in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed one year after superseded.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Administrative Officers of operating divisions, Personnel Bureau records, and the Treasurer.

PCC/FMAC-7

SYSTEM NAME:

Canal Commission Awards and Service Contracts Control Records, PCC/FMAC-7

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and organizations that have personal service contracts and sale agreements with the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Control records on Canal Commission Awards and service contracts showing transaction history, payment history, history of orders placed against awards, modifications to initial agreement, amount contracted for, and undelivered orders placed against awards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; Article XI of the Agreement in Implementation of Article III of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to contractors in reviewing the status of their accounts, the General Accounting Office and the Office of Management and Budget in the performance of their functions, and the District Court and other Government agencies for which the Panama Canal Commission makes disbursements. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards.

RETRIEVABILITY:

Filed alphabetically by name and cross-referenced to contract and award numbers.

SAFEGUARDS:

Stored in locked desk in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed 6 years and 3 months after final payment.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents, Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Contracting officers, budget officers, disbursement records, and contractors.

PCC/FMAC-8

SYSTEM NAME:

Accounts Payable Disbursement Records, PCC/FMAC-8

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama. New Orleans Office, Panama Canal Company, 4400 Dauphine Street, New Orleans, Louisiana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons to whom payments have been made by the former Canal agencies and the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to show payments from accounts of the former Canal agencies and the Commission including such documentation as purchase orders, vendors invoices, payment authorizations and approvals, check follow copies, and accounting classifications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611, 3721 (Supp. III 1979); 31 U.S.C. 65 et seq.; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to freight carriers and rate making insitutions in connection with the determination of rates, other Federal agencies gathering statistical information, contracting officers, banks with which the Commission maintains checking accounts, and the District Court and other Government organizations for which the Panama Canal Commission disburses funds. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in folders and individual forms.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroy 6 years and 3 months after the period of the account.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Procurement Officer, contracting officer, officials authorized to incur liabilities and approve payments disbursed by the Panama Canal Commission, and subject individuals.

PCC/FMAC-9

SYSTEM NAME:

Unnegotiated Checks Over One Year Old, PCC/FMAC-9

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons issued Panama Canal Company and Commission checks for which there is no record of their having been cashed for over one year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on unnegotiated checks over one year old used to

investigate claims for funds, detemine if funds are available which can be offset against accounts receivable, and investigate alleged liabilities. Records contain information such as payee name, identification number, check number, check date, name of bank drawn on, amount of check, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611, 3721 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to individuals and organizations affected by the non-negotiation of the check. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards and papers in file folders.

RETRIEVABILBITY:

Filed alphabetically by name of payee.

SAFEGUARDS:

Filed in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed 10 years after date of issue, except retain summary lists of unpaid checks.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Disbursements system, payees, and other persons concerned.

PCC/FMAK-1

SYSTEM NAME:

Claims Files, PCC/FMAK-1

SYSTEM LOCATION:

Claims Branch, Building 38, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons making or filing claims against the former Canal agencies, and the Commission; and/or persons and companies who are subjects of claims by the former Canal agencies, and the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents needed to audit and settle claims for pay and allowances, uncollectible debts, amounts due estates of deceased employees, travel expense reimbursement, personal injury or death (including injury occurring in the performance of duty), and personal property loss and/or damage. The records consist of documentation of the circumstances giving rise to the claim and basis of the claim; claimant's or individual's name, names and relationship of immediate family, address, identification number, occupation, date of birth; when, where and how the loss of or damage to property occurred; when and how individual was injured, nature and extent of injury, medical treatment, diagnosis and prognosis; payroll information; travel orders and other travel information, investigative, police, fire, autopsy, accident and medical reports, and various other materials placed into the record to perfect the claim and relating to the actions, decisions, or determinations made by the Agency or claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5581 et seq.; 5 U.S.C. 5701 et seq.; 5 U.S.C. 8101 et seq.; 22 U.S.C. 3611 and 3721 (Supp. III); 31 U.S.C. 240–243; 31 U.S.C. 951–953; 46 U.S.C. 1300 et seq.—Bill of Lading Contract of Carriage; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information or a record from this system may be furnished to and information acquired from federal, state, local or foreign agencies, the claimant and other parties of interest in connection with the audit and settlement of claims and demands by or against the former Canal agencies, and the Commission, such as the following:

1. Physicians and medical facilities for the purpose of medical treatment, examination, opinions and evaluations of claimants.

2. Insurance companies in connection with claims for or against their insured under subrogation rights or in connection with the bonding of employees of the former Canal agencies, and the Commission.

3. Lawyers representing claimants or the agency.

4. Labor unions representing claimants.

5. Steamship agencies and/or their legal representatives for furnishing services or adjusting cargo and other claims from the former Canal agencies, and the Commission or other claimants.

6. Contractors who furnish services to the Panama Canal Commission such as the packing, crating, and transportation of household goods and personal effects of employees under recruitment and repatriation.

7. Consultants who furnish services to the Panama Canal Commission, i.e., doctors, engineers, management firms, etc.

8. Transportation companies such as airlines, steamship companies, railroads, buses, and car rental agencies who furnish services to the Panama Canal Commission.

9. National Safety Council for safety purposes.

10. Department of Labor for advice on a particular case and appeals to the Employees' Compensation Appeals Board.

11. Social Security Administration for verification of earnings record of beneficiaries under the Federal Employees' Compensation Act.

12. Office of Personnel Management for furnishing record of compensation 8payments to beneficiaries under the Federal Employees' Compensation Act.

13. Department of Justice for the defense or prosecution of cases on behalf of the agency.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed alphabetically by name of claimant, etc.

SAFEGUARDS:

Records maintained in lockable file cabinets in office locked other than during office hours. Access and use of records limited to authorized personnel only.

RETENTION AND DISPOSAL:

Disposal not authorized. Retention period pending further discussion with GSA/NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Claims Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Claimants, officials of Panama Canal Commission, other government officials, physicians, medical facilities, private individuals and companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the Agency's regulations. See 35 CFR 10.22.

PCC/FMAP-1.

SYSTEM NAME:

Payroll Master File for Panama Canal Commission Employees, PCC/FMAP-1

SYSTEM LOCATION:

Payroll Branch, Panama Canal Commission, Ancon, Republic of Panama; and Data Processing Division, Administration Building, Balboa Heights, R.P.

CATEGORIES OF RECORDS IN THE SYSTEM:

Present and former employees of the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Master payroll system consisting of payroll-related or employment-related information necessary to compute gross and net pay, retirement credit, leave balances, overtime, etc., and to account for payments. Includes such information as name, employee identification number, rate number, rate of pay, deductions, date hired, where hired, roll and gang, position number, occupation, pay level, base rate, frozen or saved rate, tropical differential code, annual premium compensation, security classification, step due date, labor distribution accounts, work week, retirement code, tenure, rehired annuitant, part-time hours, social security code and number, FEHBA plan, FEGLI income tax data, Fair Labor Standards Act code, medical identification card, residence, citizenship, sex, marital status, veterans preference, physical examination, suspended leave, employee address, birth date, Federal service date, Canal service date, travel leave, check distribution code, employee status, and Combined Federal Campaign pledges.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Chapter 55; 22 U.S.C. 3611 and 3721 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING

CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the following agencies and organizations, in connection with their authorized functions: Office of Personnel Management; Internal Revenue Service; Social Security Agency; General Accounting Office; U.S. military agencies; state unemployment compensation offices; city, county, and state tax offices; employee credit unions; banks; labor unions; insurance carriers; and Combined Federal Campaign. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Magnetic tape/disks, punched cards, computer printouts, and microfilm of printout.

RETRIEVABILITY:

Retrievable by employee's name, identification number, and pay rate code.

SAFEGUARDS:

Paper records and microfilm stored in building locked when not in use. Magnetic tape/disks and punched cards filed in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Paper records or microfilm destroyed sixty years after individual's first day of employment, provided individual has been separated from service for five years. Terminated employees are carried on the computer until six weeks after the end of the calendar year in which they terminate.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject employee, personnel action form (SF-50), employing unit, time reports, and computer-generated and manual calculations from varied input data.

PCC/FMAP-2

SYSTEM NAME:

Payroll System for Vessel Employees, PCC/FMAP-2

SYSTEM LOCATION:

Payroll Branch, Panama Canal Commission, Bldg. 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and present vessel employees on Panama Canal Commission steamships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to accumulate pay-related data, calculate pay, and account for payments to crew members of Commission steamships, including such information as name, Social Security number, article number, rate, and position title.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611 and 3721 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In connection with their authorized functions, disclosure is authorized to the Office of Personnel Management; Internal Revenue Service, Federal Social Security Administration; municipal county and state tax offices in the United States, employee credit unions, financial institutions, labor unions, insurance carriers, state unemployment compensation offices. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Journals and cards.

RETRIEVABILITY:

Filed by Social Security number and retrievable by name.

SAFEGUARDS:

Stored in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed sixty years after first day of employment of vessel employee by Panama Canal Commission.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individual and ship's purser.

PCC/FMAP-3

SYSTEM NAME:

Injury Compensation Payroll Records, PCC/FMAP-3

SYSTEM LOCATION:

Payroll Branch, Panama Canal Commission, Bldg. 365, Ancon; Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries under the Federal Employees Compensation Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to account for payments of awards and as the basis for a variety of reports on payments of injury compensation, containing information on beneficiaries, such as name, identification number, address, amount of payment, amount of insurance premiums, and miscellaneous hospital bills.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 8101 et seq.; 22 U.S.C. 3611 and 3658 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Submission of reports to Office of Personnel Management and insurance carriers for use in their functions related to the Federal Employees Compensation Act. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Journals and cards.

RETRIEVABILITY:

Filed by identification number and retrievable by name.

SAFEGUARDS:

Stored in shelf or tub files in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Branch, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Panama Canal Commission Personnel Bureau and Claims Branch.

PCC/FMAP/AC-4

SYSTEM NAME:

Payroll Deductions, PCC/FMAP/AC-4

SYSTEM LOCATION:

Payroll Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and retired employees of the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained by the Payroll Branch as part of the Payroll Master File for Panama Canal Commission employees and used also by Agents Accounts Branch as part of the Accounts Receivable Records System for accounts collectible by payroll deduction. Records contain individual's gross pay, net pay, and payroll deduction detail and support data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5511-27; 22 U.S.C. 3611 and 3645 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to insurance carriers in connection with payments of health insurance benefits. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards, ledgers, and papers in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets and ledger buckets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed 4 years after fiscal year involved.

SYSTEM MANAGER(S) AND ADDRESS:

For Payroll Master File use: Chief, Payroll Branch, Accounting Division, Panama Canal Commission, APO Miami

34011. For accounts receivable use: Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Billing units and subject individuals.

PCC/FMAGA-1

SYSTEM NAME:

Cash Audit Files, PCC/FMGA-1.

SYSTEM LOCATION:

General Audit Division, Building 6530, Corozal, Republic of Panama.

CATEGORIES OF INDIVDUALS COVERED BY THE SYSTEM:

Panama Canal Commission collecting agents whose accounts are audited by the General Audit Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of cash audits to evaluate internal controls over cash and determine whether the custodian is carrying out his responsibilities with respect to Government property and to identify weaknesses in cash controls and to make necessary changes in those controls. In case of cash shortages, records are used to determine amount recoverable from agent. Records contain information such as the identifying agent number, employee's name, employing unit, and employee's accountability at the time the audit was performed. In instances where cash shortages are found, the records will also contain information on the recovery of these amounts from the agents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3721 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Payee records in file folders.

RETRIEVABILITY:

Filed by fiscal year and agent number audited. Retrievable by name.

SAFEGUARDS:

Stored in locked file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by burning after ten years.

SYSTEM MANAGER(S) AND ADDRESS:

General Auditor, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, auditors, and employees of Agents Accounts Branch.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures of access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/FMTR-1

SYSTEM NAME:

Termination of Employment Actions Records, PCC/FMTR-1.

SYSTEM LOCATION:

Treasury Branch, Building 287, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Panama Canal Commission terminating their employment with this agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, identification number, position and grade, post office address, house number and town, office and home telephone number, date of termination, future mailing address, nature of termination, reason for termination, disposition of final pay, date of travel, transportation request, members of family with whom traveling, final destination, destination of household effects, signature of employee, employee's position number, roll and gang, whether recruited from states and whether replacement is required.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611, 3652 and 3654 (Supp. III 1979); 44 U.S.C. 3101; article III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

8 by 10½ printed form 194-T.

RETRIEVABILITY:

Indexed by name and identification number.

SAFEGUARDS:

Records maintained in locked file. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 4 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees deignated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From employee and employing Unit, Division, or Bureau.

PCC/FMTR–2

SYSTEM NAME:

Internal Revenue Service Notice of Levy Files, PCC/FMTR–2.

SYSTEM LOCATION:

Treasury Branch, Building 287, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Panama Canal Commission whose salaries are being levied by the U.S. Internal Revenue Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, address and social security number, amount of Federal income tax owed to Internal Revenue Service, tax period ended, date and amount of assessment, unpaid balance of assessment and statutory additions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 64, Internal Revenue Code of 1954; 22 U.S.C. 3611 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose to the Internal Revenue Service that the employee has been notified of his or her indebtedness, and to collect amounts owed and forward same to Internal Revenue Service to satisfy levy. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form, 8 by 10½ inches.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records maintained in locked file. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Tresurer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Internal Revenue Service, Panama Canal Commission payroll records and the individual on whom record in maintained.

PCC/FMTR–3

SYSTEM NAME:

Suspension of Check Cashing Privileges Files, PCC/FMTR–3

SYSTEM LOCATION:

Treasury Branch, Building 287, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have cashed unnegotiable checks, and persons who request cancellation or suspension of their own check-cashing privilege.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to assist in attempts to recover losses from bad checks and to aid in the determination of whether a person's checks are acceptable or whether credit may be extended to a person. Records may show the individual's name, social security number (optional) and identification number (if any), employer, telephone number, dates the checks were returned, dates of checks, number of checks returned, and monetary value of each check.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3721 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Listings disclosed to U.S. Government check-cashing facilities in the Canal area, including Army, Navy, and Air Force Exchanges. Information may be disclosed to commercial banks, credit agencies, labor unions, and employers consistent with collection practices. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards and listings.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Stored in locked file in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Lists are destroyed when superseded by new lists. Cards are destroyed when no longer required for control purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Banks or clearing houses to which checks are sent for negotiation and the subject individual.

PCC/GSCP–2

SYSTEM NAME:

Canal Protection Division Activity Report Files, PCC/GSCP–2

SYSTEM LOCATION:

Canal Protection Division Pacific and Atlantic Area Commanders' Offices, at Building 0610, Ancon, Republic of Panama and Building 140, Gatun, R.P. respectively.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or have been subjects of investigation by Canal Protection Division personnel, including those detained and those who have committed, or are alleged to have committed, violations of laws or regulations in areas protected by the Canal Protection Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

Activity reports, index cards and logbooks containing information such as subject's name, identification number, occupation and employing unit and, when a subject has been barred from vital areas, a notation to that effect; date and time of incident and report; name of person making the report; information concerning the incident or detention;

and witnesses or victims' names, identification numbers and employing units.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; and, Article III, paragraph 8, of the Agreement in the Implementation of Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

See general routine use paragraphs in 35 CFR Part 10, Appendix A. Information in connection with actual or potential violations of the security of areas guarded by the Canal Protection Division may also be disclosed to intelligence units or agencies of the United States Government including the State Department and the Department of Defense, and officials of the Government of Panama.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 8½ by 11 inches and index cards.

RETRIEVABILITY:

Alphabetical card file of names of subjects gives cross-reference to activity reports filed in numerical order.

SAFEGUARDS:

Active files maintained in file cabinets in Area Commanders' offices. File cabinets and offices locked when not in use. Inactive files maintained at Agency Records Center, a building locked when not in use. Access to files and filing areas restricted to authorized personnel.

RETENTION AND DISPOSAL:

Activity reports retained at Area Commanders' offices for two years, subsequently held at Agency Records Center for three more years, then destroyed Index cards retained for up to ten years after date of last entry.

SYTEM MANAGER(S) AND ADDRESS:

Chief, Canal Protection Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of the Privacy Act of 1974, 5 U.S.C. 552a, and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSCS-1

SYSTEM NAME:

Housing Files, PCC/GSCS–1

SYSTEM LOCATION:

Housing Offices, Community Services Division, Balboa Heights and Cristobal, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons residing in Panama Canal Commission quarters and in housing maintained by religious, commercial and charitable organizations in the Canal area.

CATEGORIES OF RECORDS IN THE SYSTEM:

Assignment and occupancy of Panama Canal Commission quarters, including information on assignee's name, eligibility, service date, identification number, address, family, size, and citizenship; name of spouse and dependents; dates of occupancy; rental and other related information; persons allowed to reside or visit with assignees; investigations of misconduct in quarters; and reports of violations of quarters regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977 and Articles III and VI of the Agreement in Implementation of Article III of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in locked metal file cabinets in buildings locked when not in use or with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed three years after occupants' termination of service.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Community Services Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager of the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, official personnel files, entry permits, dependency determinations, housing personnel, maintenance personnel, neighbors, and officials of other organizations maintaining housing in the Canal Area.

PCC/GSCS–2

SYSTEM NAME:

Housing Complaints File, PCC/GSCS–2

SYSTEM LOCATION:

General Services Bureau, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Occupants of Panama Canal Commission quarters whose cases have been referred to the Quarters Retention Committee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints, investigations, testimonies, hearings, and decisions bearing on an occupant's eligibility to retain Panama Canal Commission quarters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; and Articles III and VI of the Agreement in Implementation of Article III of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in locked metal file cabinets in buildings locked when not in use or with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by burning or shredding five years after occupant is no longer eligible for residence in the Commission housing.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, General Services Bureau, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals; complainants; investigatory personnel, including police and customs officials; officials of the Canal agencies; witnesses; Quarters Retention Committee; and court officials and records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/GSEP–1

SYSTEM NAME:

Emergency Preparedness Records (Civil Defense/Emergency Management), PCC/GSEP–1

SYSTEM LOCATION:

Various locations in the Commission as may be designated by the Agency Records Officer, Personnel Director, or other appropriate officials.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons to whom, and by whom, emergency services would be rendered in times of emergency or natural disaster.

CATEGORIES OF RECORDS IN THE SYSTEM:

As may be required, the names, addresses, ages, employment, citizenship, next of kin and other information needed to identify persons who may provide, or require, temporary housing assistance, medical care, etc., in times of emergency or natural disaster.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977; E.O. 11490 of October 28, 1969.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Forms in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Stored in lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained until revised or no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Emergency Preparedness, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individual, employer and, Housing and Personnel Bureau records as required.

PCC/GSLM–1

SYSTEM NAME:

Panama Canal Commission Library Registration Record, PCC/GSLM–1

SYSTEM LOCATION:

Panama Canal Commission Library, Bldg. 0610, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Panama Canal Commission Library check-out privileges.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, identification number or Serial number, mailing address, citizenship, dependents, agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 22 U.S.C. 3611 (Supp. III 1979); and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, 3 by 5 inch cards.

RETRIEVABILITY:

Indexed by name and Library reader's number.

SAFEGUARDS:

Records are maintained in locked file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed one year after library privilege has been cancelled. Destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Budget-Clerk, Panama Canal Commission Library-Museum, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual on whom record is maintained.

PCC/GSPL-1

SYSTEM NAME:

Law Enforcement Case Report Files, PCC/GSPL-1.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama; Agency Records Center, Building 42-D, Diablo, Republic of Panama; Cristobal Police Station, Administration Building, Cristobal, R.P.; and Police Headquarters, Building 0610, Ancon, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or have been subjects of police investigations, including persons who have committed crimes or are alleged to have committed crimes; persons witnessing or reporting criminal activities; missing persons; and persons filing official complaints about the conduct of other persons when such conduct is not a violation of law.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's and/or suspect's name, witness' or witnesses' names, complainant's name, identification or cedula number, residence, birth date, age, sex, citizenship, occupation, employer, date and time of incident, name of the investigating/arresting officer, investigative facts concerning the case. Subsystem contains subject's name, identification number, residence, birth date, age, sex, citizenship, photograph number, fingerprint classification, date and time of incident, location of case report, and notations of arrests and outstanding warrants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701-44, 76A Stat. 503-5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Released to law enforcement agencies, court officials, and local military commands as necessary to assist in the apprehension and identification of criminals, and to conduct investigations related thereto. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 8½ by 11 inches; computer printouts; magnetic tape; punch cards; logbooks; and index cards.

RETRIEVABILITY:

Logbooks and index cards permit retrieval of case report by name of arrestee, complainant, or person about whom complaint has been made. Information on computer not retrievable by personal identifier.

SAFEGUARDS:

Active files maintained in locked file cabinets in police station while not in use. Inactive files maintained in Agency Records Center, a building locked when not in use. Case Report Files in Agency Records Center normally released only to designated Commission Police officials. Magnetic tapes stored in locked rooms when not in use. Access to and use of all records restricted to authorized personnel.

RETENTION AND DISPOSAL:

Case reports retained by police for four years, subsequently held for seven years at Agency Records Center, and then destroyed. Case information and arrest records on magnetic tape automatically expunged five years after date of report unless longer retention specifically requested. Computer-produced reports retained at Police Records Branch up to ten years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-2

SYSTEM NAME:

Police Headquarters Confidential File, PCC/GSPL-2.

SYSTEM LOCATION:

Police Headquarters, Building 0610, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or have been subjects of police investigations, including persons who have or are alleged to have been involved in incidents of police interest, and persons witnessing or reporting activities of interest to the police.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, identifying number, residence, birth date, age, sex, citizenship, occupation, employer, date and time of incident, date and time of investigation, facts of investigation, informants notations, the nature and disposition of the incident, and witnesses statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701-44, 76A Stat. 503-5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to law enforcement units of the local military commands, U.S. Courts etc., consistent with identifying and apprehending criminal offenders. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 8 by 10½ inches.

RETRIEVABILITY:

By persons name or name of organization.

SAFEGUARDS:

Maintained in locked file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained indefinitely for reference purposes. Destroyed pursuant to Agency procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempted from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-3

SYSTEM NAME:

Detective Confidential Files, PCC/GSPL-3.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama and Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or have been subjects of police investigations; persons who have made official complaints to the police, who have been reported to the police on official complaints, persons involved in pending criminal investigations, and persons involved in incidents of police interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, identifying number, residence, birth date, age, sex, citizenship, occupation, employer, date and time of incident, date and time of investigation, facts of investigation, confidential source information, the nature and disposition of the incident, and witnesses statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to law enforcement units of the local military commands, U.S. Courts, etc., consistent with identifying and apprehending criminal offenders. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed and typed forms.

RETRIEVABILITY:

Filed by name of subject.

SAFEGUARDS:

Maintained in lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained indefinitely for reference purposes. Destroyed pursuant to Agency procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 33 CFR 10.21 and 10.22.

PCC/GSPL–4

SYSTEM NAME:

Convict Files, PCC/GSPL–4.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama, Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have been sentenced and have served any length of time in the Panama Canal Commission Penitentiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Convict's number, name, fingerprint classification, entrance and discharge dates, charge against convict, residence, citzenship, names of family, and related personal information. Also has history record of stay in penitentiary, disciplinary comments, brief case history of arrest and conviction, other pertinent information concerning case involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 6501–7, 76A Stat. 555–6; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to provide historical data and reference information, regarding release, parole, probation, pardon, and other pertinent data on former and present inmates of the Panama Canal Commission penal facilities; to police, courts, and investigatory agencies, with a legitimate interest in such information. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms and typed pages.

RETRIEVABILITY:

Filed by convict number.

SAFEGUARDS:

Maintained in file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

The original of the record is forwarded to the Current Records Section, Records Managment Branch upon sentencing. Duplicates are maintained at the Balboa and Cristobal Police Stations. The original record and duplicates are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miama 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL–5

SYSTEM NAME:

Prisoner Record Cards, PCC/GSPL–5.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama, Cristobal Police Station, Cristobal, R.P. and the Security Vault at Bldg. 0610, Ancon, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have been arrested by the Panama Canal Commission Police.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, identifying number, residence, birth date, age, citizenship, occupation, employer, date and time of arrest, arresting officer, sex, convict number, alias, arrest charge, name of complainant, final disposition received, and brief account of activities while individual was incarcerated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code; 22 U.S.C. 3831 and 3852 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Released to law enforcement agencies, courts, and investigatory agencies. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.8

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, 8 by 10 inches and micro-film cassettes.

RETRIEVABILITY:

Filed by name of prisoner, and date of arrest.

SAFEGUARDS:

Records maintained at main desk until discharge, then stored in locked file cabinets, and in locked micro-film cabinets. Copies of micro-film are stored in security vault. Access and use are restriced to authorized personnel.

RETENTION AND DISPOSAL:

Retained indefinitely, no disposition schedule in effect.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miama 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-6

SYSTEM NAME:

Police Photo Files, PCC/GSPL-6

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama, and Cristobal Police Station, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have been arrested, booked, and photographed by the Panama Canal Commission Police.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's photo number, height, date of arrest, and the district in which the arrest occurred.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed to civilian and military investigative and law enforcement departments of the U.S. Government, and Government of Panama courts, and other parties, including eye-witnesses to crimes as required to assist in identification of known or alleged criminal offenders. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

3 by 5 inch photographs.

RETRIEVABILITY:

By photo number, and by police blotter showing name etc.

SAFEGUARDS:

Maintained in ID Office. Access and use are restricted to authorized personnel, including witnesses to criminal activities.

RETENTION AND DISPOSAL:

Indefinitely. No disposition schedule established.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-7

SYSTEM NAME:

Fingerprint File, PCC/GSPL-7

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama, and Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons having been fingerprinted by, or whose prints have been provided to the Panama Canal Commission Police in the process of authorized law enforcement activities in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, occupation, age, fingerprint classification, offense or reason for printing, actual prints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed upon request to other law enforcement agencies and to courts consistent with the identification and/or apprehension of criminal offenders. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 4 by 6 inches.

RETRIEVABILITY:

Be fingerprint classification.

SAFEGUARDS:

Maintained in file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained indefinitely for police and law enforcement purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-8

SYSTEM NAME:

Pending Detective Investigation Records, PCC/GSPL-8

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama, Cristobal Police Station, Administration Building, Cristobal, R.P., and Police Headquarters, Bldg. 0610, Ancon, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Offenders, alleged offenders, witnesses, victims, investigatiang officers, and informants who are subjects of or involved in cases pending investigation by the Detective Unit, Panama Canal Commission Police.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of offenders, alleged offenders, witnesses, victims, investigating officers, facts of investigations, statements of witnesses, type of crime or offense being committed, date and time of case actions, locations of offense, warrants, individual data; such as age, sex, residence, telephone number, citizenship, occupation, employer, etc. and informant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed in the process of investigations to interested law enforcement agencies, investigatory agencies, courts, and federal and state justice agencies. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, memorandums, and typed pages.

RETRIEVABILITY:

By case name or by name of person under investigation.

SAFEGUARDS:

Maintained in locked file cabinets and safe. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained for the duration of the investigation. No fixed disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL–9

SYSTEM NAME:

Informant Name File, PCC/GSPL–9

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons acting as informants for the Panama Canal Commission Police.

CATEGORIES OF RECORDS IN THE SYSTEM:

The name of police officer the informant reports to, the informant's name and number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

3 by 5 inch cards.

RETRIEVABILITY:

By informant's number.

SAFEGUARDS:

Maintained in a locked safe. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by fire once informant is no longer used.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL–10

SYSTEM NAME:

Master Name File, PCC/GSPL–10.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama and Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been arrested; reported offenses to the police; been involved in an incident coming to the attention of the Panama Canal Commission Police; been reported missing; and, persons who have outstanding warrants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identifying number, residence, birth date, citizenship, occupation, employer, photograph number, fingerprint classification, convict number, alias, sex, type of warrant, violations of law committed, date and time of the arrest/incident, investigating/arresting officer, notations about the arrest/incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Released to investigatory agencies and law enforcement agencies as required to assist in the apprehension and/or identification of known or alleged criminals, to prevent crime, locate witnesses etc. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

3 by 5 inch cards.

RETRIEVABILITY:

Filed by name of person.

SAFEGUARDS:

Maintained in file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained indefinitely on persons who have been arrested and prosecuted for a felony. All others destroyed by burning ten years after reported incident.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL–12

SYSTEM NAME:

Youth Uni Name Index File, PCC/GSPL–12.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama and Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Juveniles who have been the subjects of Panama Canal Commission Police Division juvenile reports, arrest reports, missing person reports, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, birth date, residence, sex, telephone number, facts of the case or investigation, date and time of the report, date and time of the incident, date and time of the interview, parent's name, parent's identifying numbers, parent's residence, investigating officer and youth officer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To reference reports pertaining to a juvenile, to investigatory agencies, law enforcement agencies, courts, and others with a need to know. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

4 by 6 inches.

RETRIEVABILITY:

Filed by juvenile's name.

SAFEGUARDS:

Maintained in locked file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by burning after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL–13

SYSTEM NAME:

Arrest Record File, PCC/GSPL–13

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

All individuals who have been arrested, fingerprinted, phototgraphed for violations of law. Also includes those persons required to appear in Magistrates Court for traffic violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, alias, age, birth date, marital status, color, sex, felony or misdemeanor, charge, type of arrest, convict number, photogrpah number, nationality, residence, occupation, employer, drivers license number, identifying numbers, complainant, location of arrest, court dates and disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 1691–1716, 3701–44, 76A Stat. 474–6, 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide statistical data, to identify criminal offenders, and to index such information for use by law enforcement agencies, courts, consular and diplomatic officials and others with a valid need to know. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed cards 4 by 6 inches and micro-film cassettes.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in locked Kard-Veyer (rotary file) and locked micro-film file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained indefinitely, no disposition schedule established.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be otained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Compiled from individual arrest reports, from person arrested, and from identifying case report serial numbers.

PCC/GSPL–15

SYSTEM NAME:

Complaints Against Policemen File, PCC/GSPL–15

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama Cristobal Police Station, Administration Building, Cristobal, R.P. and Police Headquarters, Bldg. 0610, Ancon, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All police personnel about whom written complaints have been submitted from citizens.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, badge number, date and time of the complaint, facts of the complaint as stated by the complainant, officer's statements as to his actions, decision on complaint, actions taken by person investigating the complaint, results of the complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Original letter of complaint.

RETRIEVABILITY:

By name of subject-police officer.

SAFEGUARDS:

Maintained in lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained indefinitely. No disposition schedule established.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Request should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From person making complaint; from employee; witnesses; investigating officer(s).

PCC/GSPL–16

SYSTEM NAME:

Traffic Accident Reports, PCC/GSPL–16

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama and Cristobal Police Station, Administration Building, Cristobal, R.P.; and the Data Processing Division, Administration Building, Balboa Heights, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in traffic accidents occurring in the Canal area.

CATEGORIES OF RECORDS IN THE SYSTEM:

Driver's name, identifying number, license number, residence, birth date, age, sex, citizenship, occupation, employer, address of employer, description of vehicle or vehicles involved, name, address and telephone number of owner of vehicle, violations committed, notations of court proceedings and dispositions, investigating officer's name, and facts and observations of the investigation. Subsystem contains driver's name, identifying number or date of birth, and traffic accident number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977; 6 Panama Canal Code 1691.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routinely released to court officials, owners of vehicles, insurance companies, and law enforcement agencies with a need to know. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed froms 8½ by 11 inches; index cards; punch cards; magnetic tape; and computer-produced reports.

RETRIEVABILITY:

Accident reports filed by accident number and date, cross-indexed by name of driver. Information on magnetic tape not retrievable by personal identifier.

SAFEGUARDS:

Active files maintained in file cabinets in offices locked when not in use. Magnetic tapes stored in locked rooms when not in use. Inactive files maintained in Agency Records Center, a building locked when not in use. Accident report files in Agency Records Center normally released only to designated Panama Canal Commission Police officials. Access to and use of all records restricted to authorized personnel

RETENTION AND DISPOSAL:

Manual files destroyed five years after final disposition of case. Information on magnetic tape automatically expunged three years after date of report unless longer retention is specifically requested. Computer-produced reports retained at Police Records Branch up to ten years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, of Police Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be otained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Compiled from information provided by the vehicle operator, witnesses, and the investigating officer.

PCC/GSPL–18

SYSTEM NAME:

Prisoner Property Record, PCC/GSPL–18

SYSTEM LOCATION:

Balboa Police Station, Balboa Republic of Panama and Cristobal Police Station, Administration Building, Cristobal R.P. Zone.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons whose personal property is held or seized by the police at the time of arrest or incarceration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of the receipt number, prisoner's name, money, and other property seized or held; the name of the receiving officer, and the receipt for return of the property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 4901–7, 76A Stat. 544–5; 22 U.S.C. 3831 and 3852 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms

RETRIEVABILITY:

Filed and retrieved by receipt number.

SAFEGUARDS:

Kept at main police desk, and then later in locked storeroom. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Held 3 years after property is returned. Destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From prisoner, and officer completing the form.

PCC/GSPL-19

SYSTEM NAME:

Poor Risk/Delinquent Citation/ Warrant File, PCC/GSPL-19

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama and Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have failed to honor their written promises to appear and pay in court for traffic citations received; and/or being sought on outstanding warrants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, date of birth, identifying number, driver's license number; the name of the officer who issued original citation; and the type of warrant and citation number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Released to investigatory agencies, courts, and law enforcement agencies as required. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed cards 4 by 6 inches.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Maintained in rotary file in dispatcher's office.

RETENTION AND DISPOSAL:

Destroyed when obsolete or cancelled.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Compiled from traffic citations, arrest records, and warrants.

PCC/GSSP-1

SYSTEM NAME:

Expert and Consultant Records, PCC/ GSSP-1

SYSTEM LOCATION:

Chief, Purchasing and Contracts Branch, Storehouse Division, Panama Canal Commission, APO Miami 34011.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM.

Experts and consultants procured by contract to furnish services to the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae of individuals, copies of contracts and charges, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3109; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977 and Article XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Filed in locked metal file cabinets in building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by shredding or burning six years after final payment.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Storehouse Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individual, references provided by individual and peers; and the component of the Canal Commission requesting expert or consultant services.

PCC/GSWT-1

SYSTEM NAME:

Vessel Employee Records, PCC/ GSWT-1

SYSTEM LOCATION:

Water Transportation Division, Building 1-5-A, 4400 Dauphine Street, New Orleans, Louisiana 70146.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Crew members of the S.S. *Cristobal.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal data on crew members of S.S. *Cristobal,* including information on qualifications, positions occupied, "Z" number, next of kin, and adverse and disciplinary action record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611 (Supp. III 1979); 46 U.S.C. Chapter 18; Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards and paper records in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in locked metal file cabinets in building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

General Agent, Water Transportation Division, Panama Canal Commission, 4400 Dauphine Street, New Orleans, Louisiana 70146.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individual, supervisors, union officials, and U.S. Coast Guard.

PCC/HL–1

SYSTEM NAME:

Industrial Health Records, PCC/HL–1

SYSTEM LOCATION:

Industrial Health Division, Bldg. 721, Balboa, Republic of Panama; and at Occupational Health Centers in Balboa (Bldg. 10), Miraflores (Bldg. 11), Pedro Miguel (Bldg. 6), Gamboa (Bldg. 63), Mt. Hope (Bldg. 5106), Gatun (Bldg. 122), Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pre-employment and periodic physical examinations; medical examinations to determine continuing fitness for duty consistent with job qualifications and requirements. Documentation of medical treatment received by an individual on an outpatient basis from hospitals, clinics, occupational health centers, and other health facilities. Also may contain abstracts of inpatient hospitalizations, information on communicable diseases, or information on participation in alcohol rehabilitation program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 1175 and 1180 (1976 and Supp. III 1979); 22 U.S.C. 3611 (Supp. III 1979); 42 U.S.C. 4561; Article III of the Panama Canal Treaty of 1977 and Annex thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information that does not relate to alcohol or drug abuse may be released from these records to the extent needed as follows: To the Communicable Disease Center, Atlanta, Georgia, other Federal agencies, or Government of Panama health officials. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, individual forms, and cards.

RETRIEVABILITY:

Records of cross-reference index cards providing access to records are filed alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets in buildings locked when not in use, or buildings with around-the-clock guards. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained until employee terminates employment with the agency. Thereafter retired to the Agency Records Center for disposition in accordance with Federal retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Health and Safety, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained as appropriate from the following officials:

1. Assistant Director/Administration, Office of Health and Safety, Panama Canal Commission, APO Miami 34011.

2. Chief, Industrial Health Division, Panama Canal Commission, APO Miami 34011.

Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager. Procedure for disclosure of information from the medical records of the individual requesting access are set forth in 35 CFR 10.9.

RECORD SOURCE CATEGORIES:

The individual to whom the occupational health record pertains, attending physicians and allied health personnel involved in the individual's treatment.

PCC/HLSF–1

SYSTEM NAME:

Industrial Accident Prevention Supervisor/Unit Awards File, PCC/HLSF–1.

SYSTEM LOCATION:

Safety Division, Building 721, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commission supervisors classified in high hazard positions who have completed a year of supervision without a disabling injury incurred to himself or his unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Supervisor's name, Division, Bureau, identification number and Unit Supervised, year supervised.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902; 22 U.S.C. 3611 (Supp. III 1979); 29 U.S.C. 668; 33 U.S.C. 941(b)(1) and (b)(4); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

5 by 8 inch cards.

RETRIEVABILITY:

Filed by Bureau-Division, indexed by name.

SAFEGUARDS:

Records maintained in filing drawers. Access and use are restricted to authorized personnal.

RETENTION AND DISPOSAL:

Maintained while employee is in a hazardous-supervisory capacity.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Safety Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Supervisor/Unit records.

PCC/HLSF-2

SYSTEM NAME:

20/30/40 Year Safety Key Awards Files, PCC/HLSF-2.

SYSTEM LOCATION:

Safety Division, Building 721, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commission employees classified in a high hazard position who have completed their 20–30–40 years of service with no disabling injury. Records are also maintained of employees in low hazard positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, identification number, roll and gang, functional code, occupational service code, service date and number of years of employment. Subsystem stamp containing date of last disabling injury (if any) and employees position hazard code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902, 8101 et seq.; 22 U.S.C. 3611 (Supp. III 1979); 29 U.S.C. 668; PCPM Chapter 452; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Computer strip size 12½ by 3½ inches.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records maintained in lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Held until termination, destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Safety Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Employees on whom record is maintained.

PCC/IO-1

SYSTEM NAME:

News Morgue Records, PCC/IO–1.

SYSTEM LOCATION:

Office of Public Information, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Newsworthy and potentially newsworthy individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained as a ready reference from which to obtain background information for news stories and articles about individuals for publication in house organs and news media. Records include biographical sketches, press releases, media clippings, interview notes, and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301; 22 U.S.C. 3611; 44 U.S.C. 1108 and 3101; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to news media and other publishers for publication is authorized. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Index cards, individual forms, and paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of individual.

SAFEGUARDS:

Stored in file cabinets in building with around-the-clock guards. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Office of Public Information, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, individuals interviewed about subject individuals, and information published about subject individuals.

PCC/IR-1

SYSTEM NAME:

Quarterly Report of Employee Union Dues Deductions, PCC/IR–1.

SYSTEM LOCATION:

Office of Industrial Relations, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Panama Canal Commission employees who pay union dues through payroll deductions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, identification number and dues deduction amounts. Payroll information cross-referenced with payroll dues deduction requests received from unions and individual employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5525 and 7115; 22 U.S.C. 3611 and 3701; Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Computer printout provided upon request by the Data Processing Division, Panama Canal Commission.

RETRIEVABILITY:

Reported by employee identification number and name.

SAFEGUARDS:

Maintained in locked cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed every three months upon receipt of updated quarterly listings.

SYSTEM MANAGER(S) AND ADDRESS:

Industrial Relations Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The employee's payroll dues deduction request.

PCC/IR-2

SYSTEM NAME:

Grievances, Appeals, and Adverse Actions Records, PCC/IR-2.

SYSTEM LOCATION:

Office of Industrial Relations, Adverse Actions Section, Bldg. 0610, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Panama Canal Commission who have filed a grievance, appealed a disciplinary action to the agency or an adverse action to the agency or the Office of Personnel Management, or submitted to the agency or the Panama Canal Board of Appeals a position classification appeal, insofar as personal information has been incorporated into the position classification file.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files and indexes on employee grievances and adverse or disciplinary action appeals containing the formal grievance or appeal; background, supporting, and investigatory information; record of hearing, when conducted; decision or determination; and related documents. Information of a personal nature which may have been submitted in conjunction with a position classification review or appeal procedure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 5 CFR 752, 754, 771; and Chapters 71 and 75; 22 U.S.C. 3611, 3671 (Supp. III 1979); Articles III and X of Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in the file folders, index cards.

RETRIEVABILITY:

Filed alphabetically by name of employee or by an identification number.

SAFEGUARDS:

Stored in metal file cabinets and desks in rooms locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Grievance records disposed of 3 years after closing of the case. Adverse actions records disposed of 4 years after closing of the case. Disposal is by shredding or burning. Index cards showing status of action on current cases are destroyed when cases are completed. Exception: Some case files of a precedential nature are retained beyond retention period for study and reference.

SYSTEM MANAGER(S) AND ADDRESS:

Industrial Relations Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Individuals who have filed appeals or grievances are aware of that fact and have been provided a copy of the record. They may, however, contact the Systems Manager regarding the existence of such records pertaining to them. Individuals should provide to the Systems Manager their name, date of birth, identification number, and the approximate date and kind of action taken by the agency when making inquiries about records.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager.

CONTESTING RECORD PROCEDURES:

The contest, amendment, or correction of an appeal or grievance record is permitted during the prosecution of the appeal or grievance by the individual to whom the record pertains. For contest after case has been closed, see rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; officials of the Canal agencies, Office of Personnel Management, and Board of Appeals; witnesses; official documents related to the appeal or grievance; hearing examiners; and others involved in the grievance or appeal procedure.

PCC/MIL-1

SYSTEM NAME:

U.S. Army Element, Panama Canal Commission Military Administration System, PCC/MIL-1.

SYSTEM LOCATION:

Assistant to the Director/Executive Officer, Engineering and Construction Bureau, U.S. Army Element, Panama Canal Commission, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Army military personnel assigned to the U.S. Army Element, Panama Canal Commission, which includes the Army Medical Department officers (Office of Health and Safety) and Corps of Engineer officers (E&C Bureau).

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Installation/Division Personnel System (SIDPERS): Includes a variety of SIDPERS records, personnel action files, and subsystems which provide comprehensive and detailed personnel accounting, name, age, social security number, date of birth, previous assignments, awards, schooling, leave data, specialty designator codes; also includes the requirement for a unit personnel file on each member.

Table of Distribution and Allowances (TDA): Listing of authorized positions in the U.S. Army Element by title, MOS, and grade and assigned incumbents by name, MOS, and grade.

COMCENTER Messages: Daily TWX traffic of a medical nature received by the SOUTHCOM Communications Center which may identify individuals or consist of personalized information about individuals.

Graduate Level Training Requirements—Army Educational Requirements Board (AERB): Educational data on all Engineer Corps officers assigned to the U.S. Army Element to include name, rank, specialty, training level, and position.

Military Physicians Variable Incentive Pay (VIP): Information on payment of incentive pay to military physicians to include physicians name, years of service, rank, monthly pay and authorized VIP payment.

Training files: Information regarding mandatory training and continuing educational training.

Orders, permanent orders, and letters of authorization: Information includes identifying data of the military member, civilian, or dependent named in the order.

Hazardous duty pay file: Authorization by competent order for designated military members to receive hazardous duty pay.

Officer Efficiency Report (OER) and Enlisted Efficiency Report (EER) Working files: Information relative to job performance of individuals.

Attached Military Personnel: Information on all USAR and NG personnel attached to U.S. Army Element for temporary training purposes to include identifying information and correspondence regarding individual's military experience.

Military Awards: Narrative justification of job accomplishments during assignment and concurrence/recommendation of supervisors in chain of command.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3201–4021; 22 U.S.C. 3611 and 3644 (Supp. III 1979); 44 U.S.C. 3101; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released for the following purposes to the organizations and individuals indicated:

1. To provide input to Department of the Army (DA) and local military support units, including suspense and feeder information relative to status, change of position, pay, etc. of individuals.

2. To provide current listing of personnel by TDA position for reporting to personnel action officer at Department of the Army and local levels; copies provided each officer assigned.

3. To enable actions to be initiated regarding medical treatment requests for individuals; used to obtain update on current medical policies and requirements issued by DA, the Office of the Surgeon General, Washington, D.C., and the Health Services Command, Fort Sam Houston, Texas; routed to key staff personnel and appropriate action officers.

4. To provide verifications/justifications to DA of graduate level training requirements for engineer positions assigned to U.S. Army Element for consideration and validation by the AERB.

5. To monitor and report VIP program participation to DA and to suspend requirements for contract renewal with physicians for VIP and service obligation.

6. To process OER/EER's as required by Army regulation; includes establishing a rating scheme and monitoring system suspense and distribution to individual military members and appropriate DA agencies.

7. To compile evaluation and performance reports and submit same to the individual's reserve headquarters in accordance with Army regulations.

8. To justify military awards and provide backups, to the approving authority (DA or Commander); used to provide supervisors in chain of command information on which to base concurrence and recommendations. See also general routine use paragraphs on prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, cards, individual forms, and lists.

RETRIEVABILITY:

Filed or cross-referenced for retrieval alphabetically be name.

SAFEGUARDS:

Stored in locked, metal file cabinets in building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

See AR 340–18–current series.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant to Director/Executive Officer, Engineering and Construction Bureau, U.S. Army Element, Panama Canal Commisson, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10 and 32 CFR Part 505.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains and military sources.

PCC/MRBL–1

SYSTEM NAME:

Marine License Files, PCC/MRBL–1

SYSTEM LOCATION:

Board of Local Inspectors, Bldg. 5140, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All permanent employees of the Panama Canal Commission in positions for which a Panama Canal marine license is required. Subsystem includes individual applications and examination papers filed in license file, Records Section, Records Management Branch, Administration Building.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, identification number, employing unit, work area, size and type of license, competence of applicant, exmination grades,

promotions, salaries, license serial number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3778 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Apendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Book shelf for license stubs, file cabinet for file folders with correspondence and card file for license cards.

RETRIEVABILITY:

Indexed by name; by license serial number.

SAFEGUARDS:

File folders in lockable file cabinet. Cards and license stubs available for unit personnel screening. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retain 5 years after termination of employee and then transfer to FRC-Atlanta. Destroy 55 years after first entry in records.

SYSTEM MANAGER(S) AND ADDRESS:

Chairman, Board of Local Inspectors, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURE:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual; Proctors for examinations; Port Captains, examination graders; Board of Local Inspectors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is testing or examination material is exempt from certain subsections of 5 U.S.C. 552a and from the procedure for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/MRPA–1

SYSTEM NAME:

Admeasurer Examination File, PCC/MRPA–1

SYSTEM LOCATION:

Admeasurement Office, Bldg. 28, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Boarding Inspectors, Admeasurer assistants, and Admeasurers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Examinations, answer sheets, scoring sheets, evaluation sheets.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Presidential Proclamation 2248, August 28, 1937, continued in force by virtue of Sec. 19 of Act, October 18, 1962, 76A Stat. 1, 700; 22 U.S.C. 3811 (Supp. III 1979); 35 CFR 133.32 and 135.441; Article III of the Panama Canal Treaty of 1977.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine uses paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Manila folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Maintained in lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed upon employee termination.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Admeasurement, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is testing or examination material is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/MRTO–1

SYSTEM NAME:

Marine Accident Reference Cards, PCC/MRTO–1

SYSTEM LOCATION:

Pilot Administrative Unit, Transit Operations Division, Marine Traffic Control Building, La Boca, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission. Pilots employed by the Transit Operations Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, identification number, date of bith, dates of promotion, and ship accident data; including the ship's name, description, date of occurrence and fault or no fault of employee involved. When a ship incident does not require a Board of Local Inspector's investigation, an administrative report noting the date, ship's name and description is included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3777–3778 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; 35 CFR Part 117.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper cards and sheets.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Kept in lockable file cabinet or desk. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

No retention schedule established. Retained indefinitely

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Transit Operations Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10

RECORD SOURCE CATEGORIES:

Chairman, Board of Local Inspectors, Port Captains (Balboa and Cristobal).

PCC/MRTO-2

SYSTEM NAME:

Pilot Workload Statitics, PCC/MRTO-2

SYSTEM LOCATION:

Transit Operations Division, Marine Traffic Control Center, La Boca, Republic of Panama; and Data Processing Division, Administration Building, Balboa Heights, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal pilots.

CATGEGORIES OF RECORDS IN THE SYSTEM:

A pilot master file and information for producing reports on the workload of the pilot force. The master file contains information such as pilot's name, identification number, mailing address, home telephone number, residence, education level, professional licensing data, and officer and maritime experience. Also included is such Panama Canal Commission employment information as employee status, pilot's home district, qualification and group numbers, seniority number and date, current and permanent nonwork days, pilot-in-training data including dates licenses issued, Federal service date, and termination dates and reasons. Reports produced include, for each pilot, such information as daily details of transits, hours worked, travel hours, available time, and leave scheduled.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3811 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; 35 CFR Part 105.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Magnetic tape and punched cards; computer printouts; computer input forms.

RETRIEVABLILITY:

By name of pilot.

SAFEGUARDS:

Computer printouts and input forms kept in lockable cabinets in rooms locked when not in use. Magnetic tapes kept in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Input forms kept at Marine Traffic Control Center up to three motnths, then sent to Agency Records Center, where retained for three years and then destroyed. Pilot master file purged and updated weekly; workload data retained on magnetic tape indefinitely. Computer printouts retained up to one year at Transit Operations Center, then sent to Agency Records Center, where retained for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Transit Operations Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the system Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Pilots.

PCC/OPR-1

SYSTEM NAME:

Operating Unit Personnel Records, PCC/OPR-1

SYSTEM LOCATION:

May be maintained in Section, Branch, Division, Independent Unit, Staff Office, Bureau or other employing unit to which employee is assigned.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and present employees with category of full-time permanent, part-time permanent, full-time temporary, part-time temporary, and intermittent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained by operating officials and used in administering employees and organizational segments under their technical and administrative control. They include office copies of documents kept in the official personnel folder and documents pertaining to the administration of individual employees which are not appropriate for inclusion in the official personnel folder. The records may contain information such as: Employee's name, Panama Canal Commission identification number; mail address; home address and telephone number; social security number (optional); birth date; marital status; position number and title; position descriptions; employment history; educational qualifications; professional qualifications; performance review and evaluation, including date and rating; training and management development records, including types of courses taken and completion dates; special assignments; counseling interview record; award data; commendations; oral admonishments; disciplinary, adverse, and other personnel actions; grievances; leave and travel records, including official business travel vouchers; accident or injury records; attendance and absenteeism records; relief assignment records; job equipment checkout listings; U.S. Government vehicle and equipment operators license records; work, overtime and shift schedules; timekeeping records; tuition refund agreements; key and equipment inventory control listings; potential retirement date listings; native and foreign languages; blood donor information; copies of W–4, employee withholding statements; names, addresses and telephone numbers of next of kin for notification in emergency situations; participation in civic, welfare, recreational and union activities; eligibility for tropical differential.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611 (Supp. III 1979); 44 U.S.C. 3101; Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To have as ready reference for use in compiling training reports required by the Office of Personnel Management; referrals to promotion boards; in responding to inquiries from professional and medical societies, bar

associations, prospective employers, employment agencies, etc., concerning personal characteristics and qualifications, employment background, job performance and advancement potential, etc. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper files maintained in file folders stored in desk drawers or filing cabinets, records also entered and stored in work processing equipment and on magnetic disks utilized with word processing equipment.

RETRIEVABILITY:

Employee name, identification number, or position number.

SAFEGUARDS:

Paper records maintained in lockable file cabinets or supervisor's desk. Magnetic disks and word processing equipment kept in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Records reviewed at end of calendar year and documents which have been superseded or are no longer applicable are to be destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Head of Section, Branch, Division, Independent Unit, Staff Office, Bureau of other employing unit where employee works.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual to whom information applies; personnel actions; performance review or personnel evaluation reports; letters of commendation or reprimand; travel orders; college transcripts; training records; and other related papers.

PCC/OPR-2

SYSTEM NAME:

Operating Unit Employment Inquiry Files, PCC/OPR-2

SYSTEM LOCATION:

May be maintained in Section, Branch, Division, Independent Unit, Staff Office, Bureau or other unit receiving informal inquiries or requests for employment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public and employees of other units or agencies who anticipate, or are in the process of applying for jobs with the Panama Canal Commission unit maintaining the record.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained by operating officials to whom applicants have applied directly for employment. The records may contain copies of SF-171, application for Federal employment, showing applicant's name, address, telephone number, social security number, employment experience, school transcripts, educational, professional or skilled craft history and background, native or foreign languages, other skills, awards or special commendations, references, statements from previous employers, resumes, etc. May also contain record of interviews, if any, name of interviewer, and evaluation of applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1979.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders stored in desk drawers or file cabinets.

RETRIEVABILITY:

Filed alphabetically by name of applicant.

SAFEGUARDS:

Maintained in lockable file cabinet or operating unit official's desk. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Records may be sent to Panama Area Personnel Board for determination of applicant's eligibility and consideration for employment under the Canal Zone Merit System (and the Panama Canal Employment System when it replaces the Canal Zone Merit System, pursuant to the Panama Canal Act of 1979); directly for consideration if vacancy is excluded from Canal Zone Merit System (and the Panama Canal Employment System) returned to applicant; or destroyed twelve months after initial inquiry.

SYSTEM MANAGER(S) AND ADDRESS:

Official in Section, Branch, Division, Independent Unit, Staff Office or Bureau maintaining such records.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORDS ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual to whom information applies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations as part of systems PCC/PB-1 or, if position is exempt from Canal Zone Merit System, (and the Panama Canal Employment System), PCC/PR-5.

PCC/PB-1

SYSTEM NAME:

Merit System Recruiting, Examining, and Placement Records, PCC/PB-1.

SYSTEM LOCATION:

Panama Area Personnel Board, Bldg. 6531, Corozal, Republic of Panama, and Central Examining Office, Building 363, Ancon, R.P., and personnel and other offices of Federal agencies in Republic of Panama authorized to make appointments to positions and to act for the Board by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking eligibility for positions with Federal agencies in the Republic of Panama and current and former employees of Federal agencies in the Republic of Panama.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records compiled for determining an individual's suitability, qualifications, and ratings to establish status for eligibility for employment; for referring and placing individuals for employment, transfer, promotion, reassignment, and reappointment; and for providing statistical information for conducting personnel research and management studies. They contain information concerning education and training; employment history and earnings; appraisal of past performance by current and previous employers, educators, and personal references; convictions for offenses against the law; responses to test items and questionnaires; results of tests; rating sheets; appraisals of potential; honors, awards, or fellowships; military service and veterans preference; birthdate and birthplace; citizenship; identification numbers; legal residence; home addresses and telephone numbers; general suitability and medical fitness for Federal employment; applicant's conditions and preferences for employment; special qualifications; registers and certificates of eligibles; actions taken; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3652, 3654, 3661–3664 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSEM.

STORAGE:

Paper records in file folders, individual forms and cards, and computer printouts.

RETRIEVABILITY:

Filed or retrievable alphabetically by name of individual and by date of birth.

SAFEGUARDS:

Sensitive information is stored in locked metal file equipment and other records are stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Applications and supporting documents:

a. Transferred to employing agency when applicant is selected for permanent appointment.

b. Transferred to designated U.S. Civil Service Commission area office on transfer of eligibility.

c. Eligible applicants: Destroyed 10 years after termination of register.

d. Canceled or ineligible applicants: Destroyed two years after date register is established or upon termination of the register, whichever is earlier.

e. Vouchers and correspondence are filed with applications. Index Cards:

a. Permanent Examination Records Cards: Destroyed 10 years after termination of register.

b. Pending Record Cards are destroyed upon completion of processing and rating of applications.

Certificates of eligibles: Destroyed 2 years after date of certificate. Register of eligibles destroyed 10 years after termination of register. Routine Examining Program Test Answer Sheets.

a. Eligibles answer sheets are destroyed after three years.

b. Ineligibles answer sheets are destroyed after six months.

Other records, permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Panama Area Personnel Board, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager, his delegate, the Manager, Central Examining Office, Balboa Heights, R.P., or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Individual should provide name, date of birth, approximate date of reocrd, and title of examination or announcement with which concerned. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to one of the addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, employers, schools, references, neighbors, associates, credit bureaus, law enforcement agencies, probation officials, prison officials, personnel managers, medical officers and records, government agencies, and others.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which would reveal the identity of confidential sources or is testing or examination material is exempt from certain subsections of 5 U.S.C. 552a and from the procedures set forth in the agency's regulations. See 35 CFR 10.22.

PCC/PB-2

SYSTEM NAME:

Appeals Grievances, Complaints, and Assistance Records, PCC/PB-2.

SYSTEM LOCATION:

Panama Area Personnel Board, Bldg. 6531, Corozal, Republic of Panama and Central Examining Office, Building 363, Ancon, R.P., and personnel and other offices of Federal agencies in the Republic of Panama authorized to make appointments to positions and act for the Board by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Federal employment and current and former Federal employees in the Republic of Panama who have appealed a qualification or rating or who have registered complaints or made requests for assistance on any phase of the operations of the Board and the Central Examining Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to a decision, process, determination or reply made by the Board on an appeal, grievance, complaint, or request for assistance affecting an individual's consideration for employment through the Merit System, and used also to provide statistical information for conducting personnel research and management studies. The records consist of the initial appeal or complaint; letters or notices from and to the individual; records of hearings when conducted; documentation supporting a decision or determination; affidavits or statements; testimonies of witnesses; investigative reports; instructions to an agency about action to be taken to comply with decisions; related correspondence, opinions, and recommendations; and results of rating panels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3652, 3654, 3661–3664 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders and binders, and index cards.

RETRIEVABILITY:

Filed or retrievable alphabetically by name of individual and by date of birth.

SAFEGUARDS:

Stored in locked metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Panama Area Personnel Board, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Individual should provide name, date of birth, and approximate date and kind of action taken. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals; agency and Board officials; affidavits of employees; testimonies of witnesses; documents in file related to the appeal, grievance, complaint, or request for assistance; and correspondence from organizations or persons with pertinent knowledge.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures set forth in the agency's regulations. See 35 CFR 10.22.

PCC/PB-3

SYSTEM NAME:

Personnel Investigation Records, PCC/PB-3.

SYSTEM LOCATION:

Panama Area Personnel Board, Bldg. 6531, Corozal, Republic of Panama, and Central Examining Office, Building 363, Ancon, R.P., and personnel and other offices of Federal agencies in the Republic of Panama authorized to make appointments to positions and to act for the Board by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for employment in the Federal service and current and former Federal employees in the Republic of Panama.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative records compiled to evaluate applications for employment and to provide statistical information for conducting personnel research and management studies. They contain information regarding an individual's physical and mental health, character, conduct, and behavior in the community where the individual has lived; arrests and convictions for any violations against the law; reports of interviews with former supervisors, co-workers, associates, educators, etc.; reports about the overall qualifications of an individual for a specific position; reports from law enforcement or corrective/parole agencies, former employers, educational institutions, and medical officers and institutions; veterans' preference claims for veterans' wives, widows, widowers, and mothers; lists of persons barred from military installations and pier areas; lists of police checks; police records; and penitentiary predischarge reports, parole officers' postdischarge statements, and wardens' postdischarge statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3652, 3654, 3661–3664 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders and individual forms and cards.

RETRIEVABILITY:

Filed or retrievable alphabetically by name of individual and by date of birth.

SAFEGUARDS:

Stored in locked file equipment in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Lists of persons barred from military installations and piers are destroyed when the bar or restriction is lifted. Penitentiary predischarge reports, parole officer and warden statements are transferred to:

1. The application file when a decision is made to permit the individual to compete for Federal employment.

2. To the Suitability Investigations Index Card (Personal Data Card) when a decision is made to suspend the individual from competition for Federal employment.

Panama Canal Commission or United States police records and check lists are destroyed when the data is transferred to the Suitability Investigations Index Card (Personal Data Card) subsequent to receipt. Police records received from the Republic of Panama which are owned by the individual are returned to the owner after transfer of the data to the Suitability Investigations Index Card (Personal Data Card). Statements from the individual and from other sources are transferred to the application file when the individual is cleared for Federal employment. Suitability Investigations Index Cards (Personal Data Cards) and other records are destroyed upon death, retirement or at age 70 of the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Panama Area Personnel Board, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager, his delegate, the Manager, Central Examining Office, Balboa Heights, or the Agency Records Officer, Administration Building, Balboa Heights. Individual should provide name, date of birth, and the approximate date and kind of action taken. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to one of the addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, employers, schools, references, neighbors, assoicates, credit bureaus, law enforcement agencies, probation officials, prison officials, personnel managers, medical officers and records, government agencies, and others.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/PR-1

SYSTEM LOCATION:

Personnel Operations Division, Bld. 5553, Diablo, Republic of Panama.

SYSTEM NAME:

Disability Relief, Retirement and Group Supplementary Life Insurance Records, PCC/PR-1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Disability Relief annuitants and surviving widows; Civil Service Retirement annuitants; employees who died while in service; survivors of deceased employees and annuitants; and employees and annuitants enrolled in the Supplementary Life Insurance Program sponsored by the Group Insurance Board (Panama Canal Area).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information used in the administration of the Cash Relief Act of July 8, 1937, as amended, and in the application of related policies on medical treatment and care, annuitants' group life insurance, and the eligibility of widows of deceased annuitants for annuities.

Reference files from which information or statistical data may be furnished quickly on employees who retired under the Civil Service Retirement Act, employees who died while in service, and survivors who submitted applications or claims for death benefits and unpaid compensation.

Identification of employees and annuitants enrolled in the Group Supplementary Life Insurance Program and their beneficiaries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapters 83 and 87; 22 U.S.C. 3658, 3681–3683 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, cards, and individual forms.

RETRIEVABILITY:

Filed alphabetically by name or filed by identification number.

SAFEGUARDS:

Stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Index cards on persons designated to act as the agents of Disability Relief annuitants are destroyed when annuitant dies. Other records: Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addresed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, official personnel files, and medical and welfare personnel.

PCC/PR-2

SYSTEM NAME:

Employee Benefits Records, PCC/PR-2

SYSTEM LOCATION:

Personnel Operations Division, Bldg. 366, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees and their dependents or other members of their household.

CATEGORIES OF RECORDS IN THE SYSTEM:

Determinations of employees' eligibility for, or entitlement to, the tropical differential, home leave and repatriation travel, Commission housing, and other employee benefits.

Determination of an individual's status as dependent or member of household of employee to establish his or her eligibility for residence in Commission housing, medical treatment, education, purchase authority, and transportation benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–42 and 5924; 22 U.S.C. 3641–3658 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of employee.

SAFEGUARDS:

Stored in metal file cabinets in buildings locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of the addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject employees and officials of the Canal agencies.

PCC/PR-5

SYSTEM NAME:

Recruiting and Placement Records, PCC/PR-5.

SYSTEM LOCATION:

Personnel Operations Division, Bldg. 366, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for employment or are employed with the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for employment and records related thereto; overseas recruitment processing records; special placement and program records, such as records on the excluded appointments of mentally retarded applicants, the appointment of handicapped persons, the student assistant program, the upward mobility program, and the worker-trainee program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3641–3654, 3671, 3672 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977; E.O. 11478, August 8, 1969; 42 U.S.C. 2000e–16; E.O. 11171, August 18, 1964; 29 U.S.C. 791.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folder, index cards, lists, and individual forms.

RETRIEVABILITY:

Filed alphabetically by name of subject individual or by an identification number.

SAFEGUARDS:

Stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Applications for employment and records related thereto are transferred to recruitment folder if applicant is selected for employment from overseas. When applicant is employed, documentation is transferred to Official Personnel Folder. Applications are destroyed if applicants fail to update in one year from date of acknowledgment of application. U.S. recruitment data cards are retained indefinitely for statistical purposes. Miscellaneous correspondence and listings pertaining to employees under recruitment are destroyed after two years. Vouchers from references listed by applicant are destroyed after one year. Individual special placement and program records are destroyed when employee terminates or individual's participation in program ends.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of the addressees designated in Notification Procedures, proceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, medical personnel, police officials, officials of the Canal agencies, schools attended by applicant, and individuals listed as references by applicant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/PR-6

SYSTEM NAME:

Training and Employee Development Records, PCC/PR-6.

SYSTEM LOCATION:

Human Resources Development Staff, Office of Personnel Administration, Bldg. 0602, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Canal and other Federal agencies on the Isthmus who have participated in training or development programs sponsored or conducted by the Canal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on training and development of employees under a variety of programs such as apprentice program; the tuition refund program; and various executive, managerial, supervisory, administrative, Spanish and English language, technical, and professional training and development programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4101–18; E.O. 11348 of April 20, 1967; E.O. 11171, August 18, 1964; 22 U.S.C. 3611 (Supp. III 1979); Articles III and X of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file holders, cards, and individual forms.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Apprentice enrollment and grade records are retained permanently. Other records are retained for three years after termination of the session of the program in which the trainee was enrolled, except summary records for management development program are maintained until employee terminates or is dropped from the program.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Request should be addressed to either of the addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individual, official personnel records, instructors, agency officials, program officials, and Veterans Administration.

PCC/PR-7

SYSTEM NAME:

Personnel Information System, PCC/PR-7

SYSTEM LOCATION:

Management Information Systems, Panama Canal Commission, Administration Building, Balboa Heights, Republic of Panama; and Personnel Operations Division, Ancon, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current employees of the Panama Canal Commission in permanent and temporary positions. After September 30, 1979, all employees terminated through reduction-in-force procedures who participate in a priority reemployment program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employee identification number and employment-related and retention register data in an automated personnel file, in combination with the information in the automated system of records, the "Payroll Master File for Panama Canal Commission, PCC/FMAP-1."

Records in FMAP-1 include: birthdate; Social Security number; veteran preference; tenure; present position occupational code; position number; security classification; wage category; grade; salary; tenure conversion date; step increase due date; work week; roll and gang; Federal service date; Panama Canal service date; FEHBA plan; FEGLI income tax data; travel leave; residence; citizenship; sex; marital status; physical exam; position rate number; timing unit; pay basis; and annual premium compensation.

Records in the automated personnel file include; outstanding performance rating; status of position; target grade of position; temporary promotion indicator; competitive level; eligibility for repatriation and vacation leave travel; APRTE (actual place of residence at time of employment). The automated personnel file also includes information needed for proper administration of personnel programs and policies in accordance with the Panama Canal Treaty of 1977 and related agreements, such as coded information identifying employees who are: entitled to grade and pay retention; eligible for early optional retirement; covered by the Panama Social Security System; subject to a 5-year rotation plan; reemployed within six months of effective date of the treaty; Panamanian employees who have been promoted/trained; U.S. and non-U.S. citizen employees who are married to Panamanians or who have resided in the Republic of Panama at least ten years. The Reemployment Priority List (former employees terminated through RIF) will contain information as to qualifications for reemployment in or promotion to specific occupational series and grade levels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. Chapters 35, 45, 55; 22 U.S.C. 3611 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be:

a. Disclosed to the following agencies and organizations, in connection with their authorized functions: Office of Personnel Management; Merit Systems Protection Board; Internal Revenue Service; Social Security Administration; General Accounting Office; U.S. military agencies; state unemployment compensation offices; city, county, and state tax offices; employee credit unions; banks; insurance carriers; employee and professional organizations; and Combined Federal Campaign.

b. Disclosed to officials of labor organizations when relevant and necessary to their duties concerning personnel policies, practices, and matters affecting working conditions.

c. Used to promote the incentive awards program through the local news media.

d. Disclosed to prospective employers or other organizations, at the request of the individual.

e. Used in the selection process by the agency in connection with appointments, transfers, promotions, or qualifications determinations. To the extent relevant and necessary, it will be furnished upon request to other agencies for the same purpose.

f. Used to provide statistical reports to Congress, U.S. Government agencies, the Government of Panama, and the public on characteristics of the Federal work force.

g. Used in the production of summary descriptive statistics and analytical studies; may also be used to respond to general requests for statistical information (without personal identifier) under FOIA; or to locate individuals for personnel research or other personnel research functions.

h. Diclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

i. Disclosed in accordance with the general routine use paragraphs in prefatory statement and in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Magnetic tapes and disks; computer printouts; and paper records.

RETRIEVABILITY:

By employee identification number, by name, and by any or all of the categories of information in the system.

SAFEGUARDS:

A combination of standard physical security measures, appropriate management information practices, and computer system/network security controls are used to prtoect these records. Safeguards include: batch controls; computer processing controls; access to both hard copy documents and computer files restricted to authorized personnel; restricted on-line access, with authorization limited in accordance with user-entered confidential identifying code and access code. A special coordinator has been designated by the system manager to maintain control of all input documents and issuance of report information. Printouts are produced only upon written request from the system manager. Reports, tapes, and disks are kept in a locked cabinet or secure area when not in use.

RETENTION AND DISPOSAL:

Input paper records are retained for two years and then destroyed. Printouts are retained up to six months and then destroyed. Records are deleted from magnetic tapes or disks after termination of employee. Tapes and disks are erased and reused. An exception to the normal retention period is made for records relevant to a reduction in force: information about all employees on the rolls immediately

prior to the RIF is retained on tape/disk for up to two years; and printouts of information about terminated employees participating in the reemployment priority program and demoted employees participating in the priority promotion program are retained for up to two years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of the officials deisgnated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

Rules governing how an individual may request the amendment of any information about him in this system, are published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject employee; personnel action forms (SF 50); Official Personnel Folders, Incentive Award Files; documents prepared for treaty planning purposes; the agency payroll master file; and computer-generated and manual calculations from varied input data.

PCC/PR-8

SYSTEM NAME:

Systems of records noticed by the Office of Personnel Management and applicable to the Panama Canal Commission, as follows:

(1) General Personnel Records (Official Personnel Folder and records related thereto).*

(2) Retirement, Life Insurance, and Health Benefits Records Systems.

(3) Ethics in Government Financial Disclosure Records, OPM/GOVT–4.

(4) Confidential Statements of Employment and Financial Interest, OPM/GOVT–8.

*As an exception to standard practice on retention of out-of-service Official Personnel Folders, the Canal agencies are authorized to retain the Official Personnel Folders of their former non-U.S. citizen employees for two years, thereafter they are sent to the National Personnel Records Center in St. Louis, Missouri (35 CFR 253–292). Some of these former employees now may be U.S. citizens or resident aliens of the United States who are granted access to the records under provisions of the Privacy Act. Questions from such individuals regarding notification procedures, access, and contest in connection with these records should be addressed to the Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011, who is the Systems Manager, or to the Agency Records Officer, Administration Building, Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

PCC/PR-9

SYSTEM NAME:

Incentive Awards Program Files, PCC/PR–9.

SYSTEM LOCATION:

Incentive Awards Office, Bldg. 0610, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of Panama Canal Commission who have filed suggestions or received honorary awards under the Incentive Awards Program since 1954. Supervisors of suggesters since 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, idenifying number, grade, occupation, employing unit, suggestion number, rejection or approval date, amount awarded, card control number. Supervisor's name, employing unit, number of suggestions submitted by his employees, amount awarded, and savings to the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4501 et seq.; 22 U.S.C. 3611 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be used to: (a) prepare reports for the Office of Personnel Management; (b) promote the awards program through the local news media; and (c) respond to inquiries from labor unions, award recipients, employee and professional organizations.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

3 by 5 inch cards; suggestion forms; related documents.

RETRIEVABILITY:

Filed or indexed by name.

SAFEGUARDS:

Records maintained in metal card files and lockable metal filing cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Held three years after employee's termination and then destroyed by fire.

SYSTEM MANAGER(S) AND ADDRESS:

Incentive Awards Secretary, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From suggestion forms prepared by employees to whom the record pertains and from honorary award recommendations submitted by authorized management officials.

PCC/PR-11

SYSTEM NAME:

Minority Group Designator (MGD) Records, PCC/PR–11

SYSTEM LOCATION:

Personnel Operations Division, Panama Canal Commission, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizen employees of the Canal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of accessions of U.S. citizen employees containing a minority group designator code submitted to Office of Personnel Management (OPM), error lists from OPM, and transcript form and/or SF 50 (or equivalent) submitted to OPM to correct errors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7204, E.O. 11478 of August 8, 1969; 22 U.S.C. 3611 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977; 29 CFR 1613.301 and 1613.302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Forms, sheets of paper, and computer runs.

RETRIEVABILITY:

Lists of accessions filed by employee identification number; computer runs and SF 50, filed alphabetically by name; and monthly report to Office of Personnel Management and update transcript form filed by Social Security Number.

SAFEGUARDS:

Stored in a locked a steel desk in a building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Monthly report to Office of Personnel Management and error listing for that month are destroyed six months after error listing is received. Correction to monthly error listing destroyed after error list for following month is received and corrected.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is maintained and used solely for statistical reports and is not used in making any nonstatistical determinations about identifiable individuals. It is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/WO-1

SYSTEM NAME:

Panama Canal Commission Board of Directors, PCC/WO-1.

SYSTEM LOCATION:

312 Pennsylvania Building, 425 13th Street, N.W., Washington, D.C.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members and former members of the Commission's Board of Directors.

CATEGORIES OF RECORDS IN THE SYSTEM:

General biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3612 (Supp. III 1979); Article III paragraph 3(a) of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Stored in locked metal file cabinets in office locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant to the Secretary, Panama Canal Commission, 312 Pennsylvania Building, 425 13th Street, N.W., Washington, D.C. 20004.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, Republic of Panama.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom maintained.

Title Listing of Inactive Panama Canal Commission Systems of Records

Advance Authorizations to Enter the Canal Zone, PCC–CZG/ADRM–2
Canal Zone Board of Registration for Architects and Professional Engineers Directory, PCC–CZG/BRAE–2
Canal Zone Board of Registration for Architects and Professional Engineers Reference Files, PCC–CZG/BRAE–1
Case Investigations, PCC–CZG/CAPS–2
Cash Register Receipt Shortages, PCC–CZG/FVGA–2
Civil and Amateur Radio Operator and Station License Files, PCC–CZG/CALS–4
Driver's License Investigatory File, PCC–CZG/CALS–7
Driver's License Revocation Lists, PCC–CZG/CAPL–20
Fishing Pass Application File, PCC–CZG/CALS–3
Health, Medical, Dental, and Veterinary Records Systems, PCC–CZG/HL–1
Hunting Permit Application File, PCC–CZG/CALS–2
Immigration Detention Orders, PCC–CZG/CACU–12
Inmate Trust Fund File, PCC–CZG/CAPL–14
Marriage License Records, PCC–CZG/CALS–9
Medical Administration System-Exempt, PCC–CZG/HL–2
Medical Administration System-Nonexempt, PCC–CZG/HL–3
Motor Vehicle and Motorboat Registration and Operator's License Files, PCC–CZG/CALS–8
Official Permits to Have or Carry Firearms, PCC–CZG/CALS–11
Philatelic Program, PCC–CZG/CAPS–5
Purchase Authority Cards, PCC–CZG/ADGS–1
Refugee Records, PCC–CZG/SC–4
Runners, Peddlers, and Solicitors Application and License Files, PCC–CZG/CALS–10
Student Record System, PCC–CZG/CASC–1
U.S. Immigration and Naturalization Service, U.S. Citzenship Certificate Appliation and Appointment Records, PCC–CZG/CACU–10
Vehicle Registration for RP-Series License Plates, PCC–CZG/CACU–9
Visa Records, PCC–CZG/GE–1 (STATE–39)

PCC–CZG/ADGS–1

SYSTEM NAME:

Purchase Authority Cards, PCC–CZG/ADGS–1

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of private companies, organizations, and certain other government agencies, and other individuals that qualify for purchase authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employment status, residence, mailing address, purchase-authority status, marital status, citizenship, age, names and ages of dependents, and history of identification cards issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article III, 1936 General Treaty of Friendship and Cooperation, 53 Stat. 1807; Articles XI and XII, 1955 Treaty of Mutual Understanding and Cooperation, 6 U.S.T. 2273; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to court officials for the purpose of compiling jury duty rosters. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, 8 by 10½ inches.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Minimum of 5 years after individual ceases to qualify for purchase authority. Shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notifications Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individuals.

PCC-CZG/ADRM-2

SYSTEM NAME:

Advance Authorizations to Enter the Canal Zone, PCC–CZG/ADRM–2

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued advance authorization to enter the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Advance authorizations to enter the Canal Zone and related papers, such as extensions of stay and changes in Canal Zone immigration status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 841, 76A Stat. 32; E.O. 11305; 35 CFR 59.22–3; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records on backers.

RETRIEVABILITY:

Filed alphabetically by name of entrant.

SAFEGUARDS:

Stored in metal file cabinets in file room locked when not in use in a building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

After 2 years, transferred to Agency Records Center; then destroyed after 2 more years.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Sponsors of entrant.

PCC-CZG/BRAE-1

SYSTEM NAME:

Canal Zone Board of Registration for Architects and Professional Engineers Reference Files, PCC-CZG/BRAE-1

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and inactive individuals certified as Engineers-In-Training (EIT) or registered as Professional Engineer (PE) or Architect (RA) in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complete applications detaining personal history, educational record and references and record of professional practice; reference letters from individuals, verification letters from schools, State Boards, National Council of Engineering Examiners (NCEE)/ National Council of Architectural Registration Boards (NCARB), etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 CFR 69(A) and 2 C.Z.C. 1171-75; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to National Council of Engineering Examiners (NCEE), National Council of Architectural Registration Boards (NCARB) and all State Board jurisdications in connection with Publication of Roster, 35 CFR 69.141. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder 8½ by 11 inches.

RETRIEVABILITY:

Alphabetically by status of certification and registration.

SAFEGUARDS:

Active records maintained in locked file cabinet; inactive records maintained in office file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Active files maintained indefinitely. Inactive files maintained indefinitely or three years after death. Files disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual applicant, personal references, NCEE, NCARB, State Boards.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identify of confidential sources, or is testing or examination material is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC-CZG/BRAE-2

SYSTEM NAME:

Canal Zone Board of Registration for Architects and Professional Engineers Directory, PCC-CZG/BRAE-2.

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All certified Engineers-in-Training (EIT) and registered Professional Engineers (PE) and Architects (RA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Numerical listing of Engineers-in-Training, Professional Engineers and Architects by number, name and methods of registration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 CFR 69 and 2 C.Z.C. 1171-75 76-A Stat. 40-41; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For routine use by the Board and for preparation of the annual report (35 CFR 69.232); and the Roster (35 CFR 69.141); Board members, Executive Secretary to the Board, and each architect and professional engineer and architect-in-training and engineer-in-training and other persons upon request as set forth in 35 CFR 69.144. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

8½ by 11 inch papers in file folders.

RETRIEVABILITY:

Numerically by certification/registration number; cross referenced by name.

SAFEGUARDS:

File cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Indefinite. Retained by Board for reference purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR, Part 10.

RECORD SOURCE CATEGORIES:

From applicant and other sources.

PCC-CZG/CACU-9

SYSTEM NAME:

Vehicle Registration for RP-Series License Plates, PCC-CZG/CACU-9.

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Government employees, military personnel and dependents resident in Panama but entitled to Canal Zone duty free entry of vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, number, citizenship, personal description, address, and vehicle description.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 CFR Part 57; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

CArds—3 by 5 inches.

RETRIEVABILITY:

Name and number.

SAFEGUARDS:

File cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained for 1 year after close of calendar year in which records are created; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual applicant.

PCC-CZG/CACU-10

SYSTEM NAME:

U.S. Immigration and Naturalization Service, U.S. Citizenship Certificate Application and Appointment Records, PCC-CZG/CACU-10.

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons born outside the United States who are requesting United States citizenship certificates issued by the Immigration and Naturalization Service pursuant to one or more of the statutes

referred to in the authority portion of this notice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The application forms with supporting documentation such as birth, death, and marriage certificates, affidavits and other related papers are forwarded directly to the U.S. Immigration and Naturalization Service for processing. An index card containing the applicant's name, address, the date the application was received locally, and the certificate number is retained locally for appointment scheduling purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1101 note, 1443–4, 1451–4; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use includes the transmittal of the application and accompanying documents to the U.S. Immigration and Naturalization Service for processing. See also general routine use paragraphs in prefatory statement or in 35 CFR part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

8 by 10½ inch application form and paper certificates and documents; 3 by 5 inch file cards.

RETRIEVABILITY:

Name and address.

SAFEGUARDS:

Stored in unlocked file drawers in office locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by paper shredder at end of useful life.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual to whom record pertains.

PCC-CZG/CACU-12

SYSTEM NAME:

Immigration Detention Orders, PCC-CZG/CACU-12

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Stowaways, deserters, crewmembers and passengers in violation of Canal Zone Immigration Regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, number, date and place of birth, nationality, and facts relating to issuance or enforcement of the detention order.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 841-3, 76A Stat. 32; 22 U.S.C. 3611 (Supp. III 1979); article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routinely sent to local law enforcement officials as necessary to direct the apprehension, detention and repatriation of such persons. Information may also be disclosd to commercial carriers when such persons were passengers or crewmen/employees of a shipping company, airline etc. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File cabinet folder.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

File cabinet (lockable). Access and use are restricted to autorized personnel.

RETENTION AND DISPOSAL:

Maintained for two years then burned.

SYSTEM MANAGER(S) AND ADDRESS:

Agnecy Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From ship's documents and/or individual.

PCC-CZG/CALS-2

SYSTEM NAME:

Hunting Permit Application File, PCC-CZG/CALS-2

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants and holders of permits to engage in hunting in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, place or employment, rank, photograph, signature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1471, 76A Stat. 49; 6 C.Z.C. 2573, 76A Stat. 495; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

8½ by 10 inch printed form and 3 by 7 inch card.

RETRIEVABILITY:

Recovered manually.

SAFEGUARDS:

Records maintained in lockable file. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained three years after expiriation and thereafter forwarded to the Panama Canal Company Agency Records Center for disposition.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

PCC-CZG/CALS-3

SYSTEM NAME:

Fishing Pass Application File, PCC-CZG/CALS-3

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons applying for, or holding valid Canal Zone fishing passes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, street and postal address, date of birth, citizenship, occupation, identification number, place of employment and signature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1491, 76A Stat. 50; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

8½ by 10 inch printed form and 3 by 7 inch card.

RETRIEVABILITY:

Filed by pass number and name, recovered manually.

SAFEGUARDS:

Records maintained in lockable file. Access and use are restricted to authorized personnel

RETENTION AND DISPOSAL:

Forwarded to Panama Canal Company Agency Records Center three years after expiration of license.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin., Bldg., Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

PCC-CZG/CALS-4

SYSTEM NAME:

Civil and Amateur Radio Operator and Station License Files, PCC-CZG/CALS-4

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons applying for, or issued Canal Zone Amateur, Citizen's Band and Maritime Mobile Radio Operator and/or Station Licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of licensee or applicant, street and postal address, date of birth, citizenship, operator's qualification test scores and statements, phone number, station location, call sign, organization or affiliation. Also includes similar information on other persons who may be regularly operating radios licensed to other individuals, such as student or guest operators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 31-33, 76A Stat. 7; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed upon request to the Federal Communications Commission, local U.S. military frequency control coordinators, Government, State and local radio licensing authorities. Information may also be disclosed to licensing agencies of foreign governments where the applicant is claiming reciprocal licensing privileges in order to obtain a Canal Zone or foreign radio operator's license. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, questionnaires and cards.

RETRIEVABILITY:

Filed by name, call sign or license number.

SAFEGUARDS:

Records maintained in lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Call sign logbook retained as a permanent record. Other materials retained for five years after expiration of the license.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and the Federal Communications Commission.

PCC-CZG/CALS-7

SYSTEM NAME:

Driver's License Investigatory File, PCC-CZG/CALS-7

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have had their Canal Zone license or privilege to operate motor vehicles in the Canal Zone revoked, suspended, cancelled, or have a medical problem related to driving.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, street and postal address, date of birth, citizenship, identification number, color of hair, color of eyes, height, weight, type and place of

employment, grade or rank, qualification statements, photographs, and legal documents pertaining to arrests, court actions, hearings and/or related investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1001, 76A Stat. 37; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released to the U.S. Department of Transportation, State licensing agencies, courts and others having a need to know. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

8½ by 10 inch file folders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records maintained in lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retain record until operator dies or license is restored. Restored license material retained for the life of the license record. Non-renewed license records transferred to Agency Records Center, retained for ten years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC-CZG/CALS-8

SYSTEM NAME:

Motor Vehicle and Motorboat Registration and Operator's License Files, PCC-CZG/CALS-8

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons registering motor vehicles, motorcycles, trailers, motorboats, etc., with the License Section, Ancon, Canal Zone. Persons who have been issued, or applied for, licenses or permits to operate motor vehicles, boats, etc. in the Canal Zone, or in Canal Zone waters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Owner/operator information normally includes the following: Name, identification number, home address, post office box, date of birth, citizenship, height, weight, hair color. Certificate of Eligibility for active-duty members of U.S. Armed Forces who take advantage of special registration rates provided by law for such classes of persons. Information on the vehicle or craft includes engine number, manufacturer, model and color, license plate or registration number, and date of inspection.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1001, 76A Stat. 37; 2 C.Z.C. 1331 and 1358-9, 76A Stat. 46-48; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As necessary, vehicle and boat operator and registration information may be provided to:

1. Law enforcement agencies, court officials, and local military commands in connection with the investigation of violations of highway and vehicle regulations and the identification and apprehension of criminals;

2. Local air and sea rescue coordinators and local yacht clubs when a boat is overdue;

3. Officials of the Republic of Panama in connection with law enforcement and regulatory procedures;

4. Hospitals and dispensaries treating traffic accident victims;

5. The U.S. Department of Transportation, state licensing agencies, and other agencies to the extent of their need.

See also the general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Application for—forms, and related documentation; photomat cards; magnetic tapes/disks and punched cards; and computer printouts.

RETRIEVABILITY:

Retrievable by registration number; license plate number; operator/owner's name and identifying number.

SAFEGUARDS:

Paper records maintained in lockable file cabinets. Magnetic tapes/disks and punched cards maintained in rooms locked when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Paper records other than computer printouts retained for three years after expiration of current license, then transferred to Agency Records Center; disposed of at end of ten-year retention period. Computer-produced reports destroyed when updated reports are issued.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, and/or military command if the applicant is an active member of U.S. Armed Forces.

PCC-CZG/CALS-9

SYSTEM NAME:

Marriage License Records, PCC-CZG/CALS-9

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons applying for marriage licenses, or celebrating or witnessing marriages in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Marriage licenses/certificates containing such information as the name, address, date of birth, and citzenship of each party to the marriage; the date and location of the marriage ceremony; the names of the marrying official and witnesses. Includes information concerning termination or annulment of previous marriages of persons requesting licenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 C.Z.C. 4, 76A Stat. 762; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

May be released to courts, diplomatic or consular officials, military and civilian personnel officials on a need to know basis. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms and binders.

RETRIEVABILITY:

Filed by date and recovered manually.

SAFEGUARDS:

Records maintained in file cabinets in office locked when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained as a permenent record.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are Published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

PCC/CZG/CALS–10

SYSTEM NAME:

Runners, Peddlers, and Solicitors-Application and License Files, PCC–CZG/CALS–10.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons applying for, or issued licenses to act as runners, peddlers, and solicitors (Definitions of these terms set forth in 35 CFR 63.1).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, street and postal address, date of birth, parents' names, citzenship, Sanitation certificate (if required), and facts of employment or affiliation with commercial concerns being represented. Also contains information as to color of hair, color of eyes, weight, height, cedula number, etc., needed for identification purposes when applying for licenses authorizing access to certain vital installations in the Canal Zone.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1441, 76A Stat. 49; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Local U.S. military authorities, courts, and others responsible for the prevention of crime or the apprehension of criminals. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 8 by 11 inches.

RETRIEVABILITY:

Filed by license number, retreived manually.

SAFEGUARDS:

Records maintained in lockable file. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Disposed of three years after expiration of license, excluding records retained for police or security reasons.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg., Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, police, employer.

PCC–CZG/CALS–11

SYSTEM NAME:

Official Permits to Have or Carry Firearms, PCC–CZG/CALS–11.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who apply for, or are issued official permits to have or carry firearms in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, citizenship, identification number, place of employment, weapon serial number and description, and other information as may be required by the licensing officials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1471, 76A Stat. 49; 6 C.Z.C. 2572–3, 76A Stat. 495; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed or referred routinely to Law enforcement agencies; courts, military agencies of the U.S. Government. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Forms, correspondence, 3 by 7 inch cards.

RETRIEVABILITY:

Filed by name of permit holder.

SAFEGUARDS:

Records maintained in lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Records routinely disposed of three years after expiration of permit. Certain records may be retained longer for police purposes, or to record the circumstances leading to a revocation or cancellation of a permit.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg., Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, police officials, and at times the applicant's employer if certification is required that the permit may be essential for personal safety, etc.

PCC-CZG/CAPL-14

SYSTEM NAME:

Inmate Trust Fund File, PCC-CZG/CAPL-14

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons actively serving sentences in the Canal Zone Penitentiary who are enrolled in the Inmate Trust Fund program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inmate's name, convict number, date of debit or credit to his account and the account balance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 C.Z.C. 6501-7, 76A Stat. 555-6; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed as required to courts, probation, parole and pardon board officials, federal penal institutions. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 8 by 10½ inches.

RETRIEVABILITY:

By convict number.

SAFEGUARDS:

Maintained in file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained until discharge of inmate, filed with convict record and transferred with record to Agency Records Center for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records, Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR, Part 10.

RECORD SOURCE CATEGORIES

From inmate and Trust Fund Officer.

PCC-CZG/CAPL-20

SYSTEM NAME:

Driver's License Revocation Lists, PCC-CZG/CAPL-20

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have had their driving privileges revoked in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identifying number, residence, date of revocation, photograph and police number, and copy of order revoking driving privileges issued by the License Section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 31, 1001-3, 76A Stat. 7, 37; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form 8 by 10 inches.

RETRIEVABILITY:

Filed by date received, cross-referenced by name of driver.

SAFEGUARDS:

Maintained at Police Dispatcher's desk. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed once revocation is suspended.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES

Police reports, license files.

PCC-CZG/CAPS-2

SYSTEM NAME:

Case Investigations, PCC-CZG/CAPS-2

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in, witnesses to, or suspected of activities related to offenses involving narcotics, obscene literature, fraud, prohibited mail matter, rifling of mails, tampering of mail boxes, theft of mail, threatening letters, theft of money orders, theft of postal keys, vandalism of mail boxes, wrong payment of money orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, dates and facts of case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1131–32, 76A Stat. 38–39; 6 C.Z.C. 2001, 76A Stat. 481; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in folders.

RETRIEVABILITY:

Filed by Case number, name of individual and/or offense or irregularity.

SAFEGUARDS:

Maintained in lockable metal cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES: SEE RULES PUBLISHED IN 35 CFR PART 10.

RECORD SOURCE CATEGORIES:

Individuals, employees, witnesses, law enforcement agencies, courts, postal patrons, U.S. and Foreign Postal Administrations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identify of confidential source is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC–CZG/CAPS–5

SYSTEM NAME:

Philatelic Program, PCC–CZG/CAPS–5

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Stamp collectors and others making inquiries of a philatelic nature.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record normally contains correspondence showing the names and addresses of persons ordering stamps, first day covers, etc. through the philatelic program Records of, the date and amount of payment, items shipped, and related information is also contained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1131–1143, 76A Stat. 38.40; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Individual file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Maintained in metal lockable cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed two years after file becomes inactive.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORDS ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

PCC–CZG/CASC–1

SYSTEM NAME:

Student Record System, PCC–CZG/CASC–1.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in the Canal Zone school system.

a. Enrollment Records: Documents relating to the admission, registration and departure of all students attending Canal Zone schools. Included are: registration/sponsorship cards, registration and class lists, kindergarten information cards, authorization for tuition student enrollment, tuition payment records and loan file, withdrawal records, and similar or related documents.

b. Daily Attendance Register Records: Documents reflecting the daily attendance of pupils at schools. Included are absent and tardy reports, student pass slips, detention lists, suspension lists, and correspondence dealing with attendance.

c. Student Evaluation Records: Documents reflecting grades, personality traits, and promotion or failure. Included are: report cards, unsatisfactory work reports, weekly progress reports, academic suspension lists, and similar or related documents.

d. Cumulative Records: Documents pertaining to individual school students. Included in each folder are: standardized test scores, health records, accident reports, special test results, student grades and credits earned, attendance records, individual reading records, activity record card, rank in class, honors, correspondence, anecdotal records related to pupil progress and characteristics, educational evaluation reports, transcripts of academic work at other

educational institutions, and similar or related documents.

e. Guidance Records: Documents pertaining to individual school students. Included are: test scores, personality rating, grades, conference reports, teacher comments and observations, anecdotal records, parental interviews, educational evaluations, psychological reports, and similar or related documents.

f. Rosters: Documents listing students who participate in or are members of curricular or extracurricular activities. Included, for example, are participants in athletic, scholarships, Junior ROTC, driver and motorcycle training, and Safe Haven programs; dormitory residents; student assistants; members of student associations; and applicants to the U.S. Service academies.

g. Student Scholastic Records Program: Information pertaining to scholastic records of students registered in Canal Zone schools. Includes student's name and address; parent/sponsor's name and address; employee or sponsor status; class rosters; grade and class schedules; billing information (sponsored, non-sponsored, or reimbursable rates for sponsoring agency); transportation and residence codes; contract information; scheduling information; student grades and attendance; student testing, analysis, and evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 31 and 33; Congressional appropriations acts providing for operation of Canal Zone schools; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the following individuals or organizations outside the Canal agencies for the specific purposes indicated:

1. A school to which transcript of individual's record is sent and with which correspondence is exchanged in connection with individual's possible or actual transfer or entry into that school.

2. Prospective employers, when record of individual's academic history is requested in connection with individual's application for employment.

3. Organizations offering scholarships to students, and committees appointed by the Governor to screen and make recommendations to him for appointments to the U.S. Service and Merchant Marine academies.

4. President's Council for Physical Fitness to compile comparative data on physical fitness of students and to evaluate students and schools for achievements.

5. Community athletic leagues, youth programs, and other organizations sponsoring activities and events for students, to the extent that the information is public information or is required by the organization, under an agreement with the Schools Division, to assure that the student meets school standards for participation.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; individual forms; cards; microfilm; magnetic tape/disks, punched cards, and computer printouts.

RETRIEVABILITY:

Student records are filed alphabetically by school and by name of student, and chronologically by school year. The teacher class register file is filed alphabetically by school and by name of teacher, and chronologically by school year. Information in the Student Scholastic Records Program is retrieved from the computer by student number.

SAFEGUARDS:

Paper records and microfilm stored in metal file equipment in buildings or offices locked when not in use. Magnetic tapes/disks and punched cards stored in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

When student graduate or withdraw from school, their cumulative files are transferred to the Agency Records Center for permanent retention. All other student files are maintained at individual schools for 1 to 5 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Agency Records Officer, Admin. Bldg., Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the official designated in Notification Procedures, preceding. Written requests should contain the following information: current name and, if different, the name used while a student, date of birth, names of schools attended and dates of attendance.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Students, parents or guardians or responsible persons, counselors, teachers, other school staff, medical personnel, and other schools attended by students.

PCC–CZG/FVGA–2

SYSTEM NAME:

Cash Register Receipt Shortages, PCC–CZG/FVGA–2.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who experience cash register shortages.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to determine potential weakness in cash controls and may be referred to in routine cash audits or as the basis for a cash audit. Records contain information such as employee's name, cash register number, retail unit, date and amount of cash shortage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 65, 66, 76A Stat. 11.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Forms in file folders.

RETRIEVABILITY:

Filed by retail area in chronological sequence. Retrievable by employee name.

SAFEGUARDS:

Stored in locked file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by shredding after two years.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Retail unit managers.

PCC-CZG/GE-1 (STATE-39)

SYSTEM NAME:

Visa records, PCC-CZG/GE-1 (STATE-39).

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for visas aliens who may be eligible to receive visas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visa applications accompanied by documents such as birth certificates, marriage certificates, spouses' birth certificates, affidavits of support, police records, and medical examinations; letters from interested parties; and communications between the Visa Office and the Visa Office, Department of State, consulates, other U.S. Government agencies, international organizations, and foreign missions regarding the eligibility, issuance, revalidation, and extension of visas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1101-1503; see in particular 8 U.S.C. 1101 (a)(9); 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be released to the Visa Office, Department of State, other U.S. consular offices, and the Immigration and Naturalization Service to coordinate the issuance of visas; to other government agencies that have statutory or other lawful authority to maintain such information; and to interested parties inquiring as to the statut of a particular case. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, cards, and individual forms.

RETRIEVABILITY:

Filed alphabetically by name of applicant.

SAFEGUARDS:

Filed in a locked file cabinet in a building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retention of these records varies from one year to an indefinite period of time, depending upon the specific type of record involved. They are retired or destroyed in accordance with published schedules of the Department of State.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the addressee in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individuals; members of Congress; the public interested in the visa applicant's case; Department of State and other U.S. Government agencies; U.S. Consular offices; foreign missions; international organizations; and local sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) by the Department of State. See 22 CFR 6a.6(i), and (j)(1)-(3).

PCC-CZG/HL-1

SYSTEM NAME:

Health, Medical, Dental, and Veterinary Records Systems, PCC-CZG/HL-1.

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Canal agencies; individuals in the service of and sponsored by a U.S. Government agency (U.S. Armed Forces, State Department, Veterans Administration, U.S. Public Health Service, Federal Aviation Administration; Federal Highway Administration; Smithsonian Institute); retired U.S. Government employees; district dentists and their employees; conessionaires of the Canal organization; Canal Zone land licensees; Canal Zone religious, social, charitable, and educational workers; U.S. Government contractors and their employees; Canal Zone commercial company employers; and the dependents of individuals in the preceding categories who reside with the individuals. Persons other than dependents who are U.S. Government authorized Canal Zone visitors or residents; merchant seamen in transit and unsponsored individuals from ocean-going vessels; prisoners at the Canal Zone Penitentiary; charity cases sponsored by the Canal Zone United Way and teaching cases; non-resident private pay patients; and noneligible, nonsponsored individuals receiving emergency treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Qualification physical examinations: Pre-employment, and periodic medical examinations to determine fitness for duty consistent with job qualifications and requirments. Inpatient hospital medical charts: All medical information and records relating to an individual's hospitalization. Outpatient medical charts: Documentation of medical treatment received by an individual on an outpatient basis from hospital, clinics, first aid stations, and other health facilities. Also may contain abstracts of inpatient hospitalizations. Public health records: Information on individuals in community health prógrams for control of communicable diseases, industrial health, school health, quarantine, sanitation, and environmental quality control. Mental health records: All medical information and records which pertain to an individual's outpatient and/or inpatient treatment for psychiatric services, drug and alcohol rehabilitation, and other social service or psychological support. Dental care records: Information relating to an individual's history of dental care as documented in separate and distinct dental care records. Animal care and hospitalization records: Information which pertains to the quarantine, care and treatment of animals. Mortuary

service records: Information regarding mortuary services furnished.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 911 and 912, 76A Stat. 36; 5 C.Z.C. 1631–56, 76A Stat. 353–360; 6 C.Z.C. 1101, 2, and 9, 76A Stat. 448 and 450; 6 C.Z.C. 4784, 76A Stat. 540; 21 U.S.C. 1171–5 and 1180; 42 U.S.C. 257 and 4561; P.L. 93–282; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information that does not relate to alcohol of drug abuse may be released from these records to the extent needed, as follows:

1. To other Federal agencies and offices that are responsible by statute or other competent authority for Federal programs to which the records are pertinent, such as the components of the U.S. Armed Forces, the Social Security Administration, the Veterans Administration, the Civil Service Commission, retired military pay centers.

2. To the Communicable Disease Center, Atlanta, Georgia, and private contractors providing benefits under the auspices of the Canal or other Federal agencies.

3. To the police or other competent authority when the director of the hospital or other Health Bureau unit determines that prompt release of such information is essential for the apprehension of a criminal, protection of the patient, or protection of the public. Examples would be cases involving suspected child abuse, death from unnatural causes, or communicable disease.

Information may be released from these records to the extent needed, as follows:

1. To officials of other Federal agencies when requested in writing for purposes of determination of cause of death, compilation of vital statistics, management or financial audits or program evaluation, and approved scientific research in which patient identity will not be disclosed.

2. To respond to general requests for statistical information, under the Freedom of Information Act while maintaining individual anonymity.

3. To provide documentation to sponsoring agencies or other foreign governments as regards their patients consistent with the need-to-know rules of confidentiality, and procedural security in the release of information.

4. To provide basis for administrative and professional decisions regarding the coordination with U.S. foreign, and international health agencies in disease prevention and control, including information related to zoonotic and agricultural disease; inspection, surveillance, and control of food products; and international quarantine measures.

5. To medical personnel to the extent necessary to meet a bona fide emergency.

6. To a court of competent jurisdiction if authorized by an appropriate order granted after application showing good cause therefor.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, individual forms, and cards.

RETRIEVABILITY:

Records or cross-reference index cards providing access to records are filed alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets or shelf files in either file rooms locked when not in use, buildings locked when not in use, or buildings with around-the-clock guards. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Physical examination records except for those held for transfer into official personnel folder destroyed after 6 years; hospital inpatient medical charts destroyed 25 years after patient's discharge from hospital; outpatient medical charts destroyed 6 years after year of last entry in file; medical x-rays and radiographic reports filed separately from medical charts destroyed after 8 years except for selected items held indefinitely for teaching or claims purposes; veterans; case files destroyed 6 years after date of last papers in folders; venereal disease charts filed separately from medical charts destroyed 6 years after last entry; mental health patient records destroyed 6 years after last entry; patient index cards are permanent; program files are permanent; and duplicate records are destroyed after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from Agency Records Officer, Admin. Bldg., Balboa Heights, Republic of Panama.

Individuals requesting information should provide full name, date of birth, social security number (optional), agency affiliation at time of medical treatment, inclusive dates, when medical treatment was rendered, or other specific information applicable to the inquiry that might assist in identification. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Agency Records Officer, Panama Canal Commission, APO Miami 34011. Procedures for disclosure of information from the medical records of the individual requesting access are set forth in 35 CFR 10.9.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individual to whom the medical record pertains; attending physicians and allied health personnel involved in the patient's treatment; medical records and information received from outside sources; and information from sponsoring agencies.

PCC-CZG/HL-2

SYSTEM NAME:

Medical Administration System Exempt, PCC–CZG/HL–2

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Canal agencies; individuals in the service of and sponsored by a U.S. Government agency (U.S. Armed Forces, State Department, Veterans Administration, U.S. Public Health Service, Federal Aviation Administration; Federal Highway Administration; Smithsonian Institute, etc.); retired U.S. Government employees; district dentists and their employees; concessionaires of the Canal organization; Canal Zone land licensees; Canal Zone religious, social, charitable, and educational workers; U.S. Government contractors and their employees; Canal Zone commercial company employees; and the dependents of individuals in the preceding categories who reside with the individuals. Persons other than dependents who are U.S. Government authorized Canal Zone visitors or

residents; merchant seamen in transit and unsponsored individuals from ocean-going vessels; prisoners at the Canal Zone Penitentiary; charity cases sponsored by the Canal Zone United Way and teaching cases; nonresident private pay patients; noneligible, nonsponsored individuals receiving emergency treatment; and children placed for adoption or in foster homes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medico-legal: Documentation and correspondence which relates to medical records and is obtained in the processing of blood alcohol and urine drug screening procedures, rape cases, injury and claim cases, deaths and other unusual incidences. Investigation records: Detailed audits, special and routine investigations and inquiries regarding Health Bureau activities. Child abuse program: Files relating to the administrative and professional management of suspected and actual cases of child abuse. Social Services files: Files containing personal information resulting from case studies and social work counseling. Adoption program: Background information on social services management of pre-adoption home studies, child placement, counseling and follow-up actions. Foster home program: Personal data and background studies on persons interested in participation in the Foster Home Program. Complaints: Background information and investigative correspondence promulgated by complaints regarding medical care rendered. Utilization and peer review files: Sensitive information regarding the quality of care provided to patients, reasons for length of stay of patients, and other monitoring requirements as specified by accrediting agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 31–33, 911 and 912, 76A Stat. 7, 76A Stat. 36; 5 C.Z.C. 1631–56, 76A Stat. 353–360; 6 C.Z.C. 541 and 4784, 76A Stat. 429 and 540; 8 C.Z.C. 381–7, 76A Stat. 690–1; 21 U.S.C. 1171–5 and 1180; 42 U.S.C. 257 and 4561; and P.L. 91–513, and 93–282; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released from these records to the extent needed, as follows:

1. To the Joint Commission for Accreditation of Hospitals for hospital accreditation.

2. To officials of other Governments and private organizations in the Canal Zone to coordinate the medical treatment of victims of child abuse and the provision of professional assistance for those involved in such cases.

3. To members of the community and other Government organizations who are serving on committees or are assigned to adoption, foster home, and other social service programs.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed or cross-referenced alphabetically by name.

SAFEGUARDS:

Stored in locked file cabinets in buildings locked when not in use or buildings with around-the-clock guards. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

Individuals requesting information should provide full name, date of birth, social security number (optional), agency affiliation at time of medical treatment, inclusive dates when medical treatment was rendered, or other specific information applicable to the inquiry that might assist in identification. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager. Procedures for disclosure of information from the Medical records of the individual requesting access are set forth in 35 CFR 10.9.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individual to whom the medical record pertains; attending physicians and allied health personnel involved in the patient's treatment; medical records and information received from outside sources; administrative, professional, and investigatory personnel and records; testimonies and statements of individuals concerned with case; court, police, and personnel records; and information from sponsoring agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22

PCC-CZG/HL-3

SYSTEM NAME:

Medical Administration System—Nonexempt, PCC-CZG/HL-3.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Panama Canal Company and Canal Zone Government; individuals in the service of and sponsored by other U.S. Government agencies (U.S. Armed Forces, State Department, Veterans Administration, U.S. Public Health Service, Federal Aviation Administration; Federal Highway Administration; Smithsonian Tropical Research Institute, etc.); retired U.S. Government employees; district dentists and their employees; concessionaires of the Canal Zone organization; Canal Zone land licensees; Canal Zone religious, social, charitable, and educational workers; U.S. Government contractors and their employees; Canal Zone commercial company employees; and the dependents of individuals in the preceding categories who reside with the individuals. Persons other than dependents who are U.S. Government-authorized Canal Zone visitors or residents; merchant seamen in transit and unsponsored individuals from ocean-going vessels; prisoners at the Canal Zone Penitentiary; charity cases sponsored by the Canal Zone United Way and teaching cases; nonresident private pay patients; and noneligible, nonsponsored individuals receiving emergency treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vital statistics records: Birth and death records, and correspondence related thereto. Individual registration, licensure, and certification records:

Information maintained in connection with the monitoring of medical specialty training programs and certification of accreditation, including information on state and Canal Zone medical licenses held by individuals. Curriculum vitaes: Comprehensive information on qualifications and background of key Health Bureau employees and visting consultants. Drug and controlled substances records: Administrative files maintained in accordance with regulations relating to the control of narcotics. Program accreditation and certification records: Correspondence and reports relating to the management and control of activities by the professional and administrative staff, including identification of deficiences. Medical treatment indices: Records maintained by patient, disease code, physician, patient age, patient length of stay, discharge, diagnoses, and operative procedures to meet requirements of the Joint Commission for Accreditation of Hospital. Hospitals billing and bill reduction and cancellation records: Billings to insurance companies and through Agents Accounts and Payroll Branches and information obtained to make determinations regarding the ability of individuals to pay for medical treatment. Housing exceptions records: Medical backup information used in evaluating formal written requests from employees for assignment for medical reasons to government housing for which they are otherwise ineligible. Fiscal accounting records: Information regarding medical treatment rendered and tariff charges, including patient invoices. Blood bank and donor records: Information specifying donors' blood types, addresses, telephone numbers, and blood donations. Locator records: Information on location, status, and assignments of patients and employees. Hospital population records: Listings of patient. Veterans Administration data: Information pertinent to the hospitalization and treatment of Veteran Administration beneficiaries. Medical evaluation boards: Information on the composition and administration of medical evaluation boards. Aeromedical evacuation records: Information obtained for making determinations on the necessity of evacuating patients by air. Incident reports on such evacuations. Radiation exposure records: Data on individuals exposed to radiation. Community health and environmental reports. Medical Correspondence records.

The following portions of the system are on computer.

a. Hospital Census Program: Persons who are inpatients at Canal Zone medical facilities at the time the report is compiled. Includes the patient's name and/or name of sponsoring employee or agency; the patient's sex, marital status, religion, citizenship, residence, dates of admission, treatments and discharge.

b. Hospital Inpatient Billing and Statistical Program: Information, including name of patient, name of employee/sponsor or sponsoring agency, employing unit, address, telephone number, citizenship, insurance carrier, etc. of persons who are obtaining inpatient service at Canal Zone Government medical facilities.

c. Hospital Outpatient Billing Program: Information, including name of person receiving treatment during the period for which the report is compiled, the name of employee/sponsor or his sponsoring agency, employing unit, address, citizenship, telephone number, insurance carrier, etc. of persons obtaining outpatient services at Canal Zone Government medical facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 31–33, 911 and 912, 76A Stat. 7, 76A Stat. 36; 5 C.Z.C. 1631–56, 76A Stat. 353–360; 6 C.Z.C. 1101, 2, and 9, 76A Stat. 448 and 450; 6 C.Z.C. 4784, 76A Stat. 540; 21 U.S.C. 1171–5 and 1180; 42 U.S.C. 257 and 4561; and P.L. 91–513, and 93–282; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information that does not relate to alcohol or drug abuse may be released from these records to the extent needed, as follows:

1. To Federal agencies and other organizations responsible by statute or other competent authoriy for programs to which the information is pertinent, such as components of the U.S. Armed Forces, the Social Security Administration, the Veterans Administration, the Civil Service Commission, retired military pay centers, and the Joint Commission for Accreditation of Hospitals;

2. To law enforcement officials when Health Bureau officials determine that such disclosure is essential for the apprehension of a criminal, protection of the patient, or protection of the public;

3. To insurance companies and sponsoring agencies, organizations, or foreign governments for the purpose of documenting treatment or billings;

4. To officials of other agencies, foreign governments, and private organizations in the Canal Zone in connection with treatment and professional assistance in child abuse cases and in connection with adoption, foster home, and other social service programs; and

5. To United States, foreign and internationsl health officals and agencies, including the Communicable Disease Center, in connection with the reporting of human and animal communicable diseases.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; cards; individuals forms; magnetic tape/disks and punched cards; and computer printouts.

RETRIEVABILITY:

Paper records or cross-reference index cards providing access to records are filed alphabetically by name. Information retrievable from computer by patient's or employee's number.

SAFEGUARDS:

Paper records stored in file equipment in rooms or buildings locked when not in use or in buildings with around-the-clock guards. Magnetic tape/disks and punched cards filed in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Accounting and billing records destroyed after four years; blood donor cards, when donor no longer available or able to give blood; location records, when superseded; Veterans Administration beneficiaries, six years after date of last paper in folder; aeromedical evacuation records, after three years. Curriculum vitaes and individual registration, licensure, and certification records: for civilians, destroyed 1 year after separation; for military, retained 7 years after departure, transferred to Agency Records Center for 3 additional years, then destroyed. Drug and controlled substances records destroyed after 2 years. Program accreditation and certification records retained at least 3 years. Medical correspondence records retained 10 years before transfer to Agency Records Center. Computer-produced reports: Hospital Census Report destroyed when updated report issued; Hospital Inpatient and Statistical Report destroyed when updated report issued; Hospital Outpatient Billing

Report retained for 2 months after processing by billing personnel. Other records permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained as appropriate from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

Individuals requesting information should provide full name, date of birth, social security number (optional), agency affiliation at time of medical treatment, inclusive dates when medical treatment was rendered, or other specific information applicable to the inquiry that might assist in identification. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager. Procedures for disclosure of information from the medical records of the individual requesting access are set forth in 35 CFR 10.9.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, medical and other administrative records, physicians and allied health personnel, other offices of the Canal agencies, schools and colleges, certifying and accrediting officials, the United States Armed Forces and the Veterans Administration, and other hospitals, physicians, boards, and committees

PCC-CZG/SC-4

SYSTEM NAME:

Refugee Records, PCC-CZG/SC-4

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons granted temporary refuge in the Canal Zone because of civil disturbance or natural disaster or because they are seeking political asylum.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information about refugees and their families; documentation establishing refugee status, conduct agreements, housing arrangements, information on entry and departure, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 841, 76A Stat. 32; E.O. 11305; 22 U.S.C. 2601–5; E.O. 11077; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released from these records on a need-to-know basis to officials of the U.S. and foreign governments in connection with the rehabilitation or relocation of refugees. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of refugee.

SAFEGUARDS:

Stored in locked metal file cabinets in building locked when not in use. Access and use are resticted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURES:

Information may be obtained from the Agency Records Officer, Admin, Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals and members of their families; personnel of the Community Services Division, and officials of the canal agencies, other U.S. Government agencies and foreign governments concerned with the rehabilitation or relocation of refugees.

[FR Doc. 39307 Filed 12–23–80; 8:45 am]

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federal register

Wednesday
December 24, 1980

Part III

Federal Labor Relations Authority

Privacy Act of 1974; Proposed New Systems of Records

FEDERAL LABOR RELATIONS AUTHORITY

Privacy Act of 1974; Proposed New Systems of Records

AGENCY: Federal Labor Relations Authority.

ACTION: Proposed New Systems of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Labor Relations Authority, including the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel, hereby publishes its systems of records in the Federal Register.

COMMENTS: All persons who desire to submit written comments, views, or arguments for consideration by the Authority in connection with the proposed new systems should submit same on or before (30 days from date of publication).

ADDRESS: Comments should be submitted to Robert J. Freehling, Solicitor, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424. Copies of such communications will be available for inspection by interested persons during normal business hours (8:15 a.m. to 4:45 p.m., Monday through Friday, excluding holidays) at the above address.

FOR FURTHER INFORMATION CONTACT: Robert J. Freehling, Solicitor, (202) 254–9592.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Federal Labor Relations Authority, including the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel, in accordance with the provisions of subsections (e)(4) and (e)(11) of section 552a of Title 5, United States Code, as added by section 3 of the Privacy Act of 1974 (Pub. L. 93–579), proposes to adopt the notice set forth herein of the existence and character of the systems or records it maintains which contain information retrievable by an individual identifier.

In addition to the Federal Labor Relations Authority's internal system of records, reference is herein made to systems of records which are government-wide and have been previously published in the Federal Register by the Office of Personnel Management. These systems may contain information on applicants to, and present or former employees of, the Federal Labor Relations Authority:

OPM/GOVT–1, General Personnel Records published on October 26, 1979 (44 FR 61705),

OPM/GOVT–3, Adverse Action Records published on October 26, 1979 (44 FR 61709),

OPM/GOVT–4 Ethics in Government Financial Disclosure Records published on December 29, 1978 (43 FR 60983),

OPM/GOVT–5 Recruiting, Examining and Placement Records published on October 26, 1979 (44 FR 61710),

OPM/GOVT–7 Applicant Race, Sex, Ethnicity and Disability Status Records published on October 12, 1979 (44 FR 59026), and

OPM/GOVT–9 Position, Classification Review and Retained Rate of Pay Appeal Files published on October 26, 1979 (44 FR 61713).

Prior to publication of these proposed new systems of records a "Report on New Systems" was filed with Congress and the Office of Management and Budget on September 29, 1980. These systems will become effective as proposed (30 days after date of the publication) unless comments received necessitate changes. The complete text of all Federal Labor Relations Authority systems notices appear below.

Dated: December 16, 1980.

Federal Labor Relations Authority.

Ronald W. Haughton,

Chairman.

Henry B. Frazier III,

Member.

Leon B. Applewhaite,

Member.

H. Stephan Gordon,

General Counsel, Federal Labor Relations Authority.

Howard G. Gamser,

Chairman, Federal Service Impasses Panel.

Narrative Statement

The Federal Labor Relations Authority, including the General Counsel of the Authority and the Federal Service Impasses Panel, were established under sections 301–303 of Reorganization Plan No. 2 of 1978 (3 CFR, 1978 Comp., p. 327) and continued under sections 7104 and 7119 of the Federal Service Labor-Management Relations Statute (5 U.S.C. 7104 and 7119). The Authority replaced the Federal Labor Relations Council and the Federal Service Impasses Panel established under Executive Order 11491 (3 CFR, 1966–1970 Comp., p. 864).

The proposed new systems of records supplement those previously maintained by the Council and the Panel, and constitute all systems of records maintained by the Authority, which contain information retrievable by an individual identifier.

The purpose of each system of records and the authority under which the system is maintained are set forth in the respective systems of records here attached.

The new systems are not expected adversely to affect the "privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals." Safeguards incorporated in each system should minimize the risk of improper use or disclosure of information. Additionally, the establishment of these system is not expected to have any discernible effect on the "preservation of the constitutional principle of federalism and separation of power."

The descriptions under the heading "Safeguards" in the respective new systems set forth the measures instituted to minimize the risk of unauthorized access to the records involved. Since such measures have proven adequate in similar systems, others alternatives were given only limited consideration.

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FLRA/Internal–1

SYSTEM NAME:

Employee Occupational Health Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information relating to the Federal Labor Relations Authority's employees who have received health services under the Federal Employees Group Health Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of employee utilization of services provided under the Federal Labor Relations Authority's Occupational Health Program. These records contain the following information:

a. Medical history and other biographical data on those individuals requesting employee health maintenance physical examinations.

b. Test reports and medical diagnosis based on employee health maintenance physical examinations or health screening program tests (tests for single medical conditions or diseases).

c. History of complaint, diagnosis, and treatment of injuries and illnesses cared for at the Health Unit.

d. Vaccination Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, as further defined in OMB Circular No. A–72.

PURPOSE(S):

These records document employee utilization of health services provided under the Federal Labor Relations Authority's Occupational Health Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer information required by applicable law to a Federal, State, or local public health service agency concerning individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition.

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority.

c. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

d. To disclose information to the Office of Workers Compensation Programs in connection with a claim for benefits filed by an employee.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained on cards and in folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in a secured room, with access limited to personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained up to six years from the date of the last entry. Employees are given records at request upon separation; otherwise records are burned approximately three months after separation.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

c. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

c. Date of birth.

Individuals requesting access must follow the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

c. Date of birth.

An individual requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Laboratory reports and tests results.

c. The individual's co-workers or supervisors.

d. The individual's personal physician.

e. Other Federal employee health units.

FLRA/Internal–2

SYSTEM NAME:

Appeal and Administrative Review Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Labor Relations Authority employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to various appeal or administrative review procedures available to Federal Labor Relations authority employees. The system also contains records and documentation of the action upon which the appeal or review procedure was based (e.g., 90-day notices of warning of unsatisfactory performance rating).

Note.—This system does *not* include: Appeal or complaint records covered by the Merit Systems Protection Board's system of Appeals Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 4305, 5115, 5335, 7501, 7512, and Executive Order 10577.

PURPOSE(S):

These records are used to process the various appeals or administrative reviews available to Federal Labor Relations Authority employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing an appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work-force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Adverse action appeals processed under the Federal Labor Relations Authority's internal appeals systems are retained for seven years after the closing of the case. Other records in the system are maintained for a maximum of four years after the closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURES:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the record. They may, however, contact the System Manager indicated above. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the record. However, after the action has been closed, an individual may request access to the official copy of an appeal or administrative review procedure record by contacting the System Manager. Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of case and kind of action taken.

Individuals requesting access must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these cases will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

Individuals requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the records pertain.

b. Federal Labor Relations Authority officials involved in the appeal or administrative procedure.

c. Other official personnel records of the Federal Labor Relations Authority.

FLRA/Internal-3

SYSTEM NAME:

Complaints and Inquiries Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Labor Relations Authority employees about whom

complaints or inquiries have been received.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information or correspondence concerning an individual's employment status or conduct while employed by the Federal Labor Relations Authority. Examples of these records include: correspondence from Federal employees, Members of Congress, or members of the public alleging misconduct of a Federal Labor Relations Authority employee; miscellaneous debt correspondence received from creditors; and miscellaneous complaints not covered by the Federal Labor Relations Authority's formal or informal grievance procedures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

PURPOSE(S):

These records are used to take an action on or respond to a complaint or inquiry concerning an FLRA employee or to counsel the employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to a Federal Labor Relations Authority decision concerning the hiring or retention of an employee, the issuance of a security clearance, conduct of a security or suitability investigation of an individual or classification of jobs.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

2. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), the Equal Employment Opportunity Commission when requested in performances of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders which are separate from the employee's Official Personnel Folder.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

These records are disposed of upon the transfer or separation of the employee or after 1 year, whichever is earlier. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Federal Labor Relations Authority's employees wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Federal Labor Relations Authority's employees wishing to request access to their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals requesting access must also comply with Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Federal Labor Relations Authority's employees wishing to request amendment of their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals must also comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Federal employees, Members of Congress, creditors, or members of the public who submitted the complaint or inquiry.

c. Federal Labor Relations Authority's officials.

d. Other sources from whom information was requested regarding the complaint or inquiry.

FLRA/Internal-4

SYSTEM NAME:

Applicants for Employment Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424 and Federal Labor Relations Authority's regional offices (see list of regional offices in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for employment with the Federal Labor Relations Authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to applicants to the Federal Labor Relations Authority. The records include information such as: the individual's education and training; employment history and earnings; Social Security Number; home address; legal residence; birth date; birthplace, honors, awards or fellowships; military service; veterans preference; convictions of offenses

against the law; names of relatives employed in the Federal service; test records; date of application; qualification determinations; employment consideration; priority grouping; and other information or correspondence relating to the consideration of the individual for employment. This system includes any Federal Labor Relations Authority applicant supply files established for making appointments outside a register; appointments to the excepted service; or reassignments, promotions, reinstatements, or transfers of Federal employees into positions at the Federal Labor Relations Authority.

Note.—This system does not include recruiting and examining records on applicants for general Federal employment. Such records are covered by the OPM/GOVT-5 system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, and 3302; and Executive Order 10577.

PURPOSE(S):

These records are used to consider applicants for employment with the Federal Labor Relations Authority. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an Federal Labor Relations Authority decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. In contacting persons named as references, and present or former supervisors, for purposes of commenting upon, rating or verifying information about past performance submitted as part of job application.

j. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in secured rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Applications from individuals who are selected for positions with the Federal Labor Relations Authority are placed on the permanent side of the employee's Official Personnel Folder. Applicant supply records maintained in accordance with Federal Personnel Manual Chapter 833 are disposed of after two years or after inspection of the Federal Labor Relations Authority's personnel program, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of the notice titled "Systems Exempted From Certain Provisions of the Act," which appears below, indicates the kinds of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to their nonexempt records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must also comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of the notice titled "Systems Exempted

from Certain Provisions of the Act," which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment. An individual may contact an FLRA office where his or her application or other record in this system is filed at any time to update qualifications, experience, or education. Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of their nonexempt records under provisions of the Privacy Act should contact the System Manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals must also comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

(a) the individual to whom the information pertains;

(b) Federal Labor Relations Authority officials;

(c) Other sources contacted to provide additional information about the individual under appropriate routine uses listed above in the notice.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

FLRA/Internal-5

SYSTEM NAME:

Preemployment Inquiry Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424 and Federal Labor Relations Authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for employment with the Federal Labor Relations Authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to an applicant's qualifications for employment in terms of character, reputation, and fitness; including letters of reference, responses to preemployment inquiries, qualifications and character information, and other information which may relate to the specific selection factors associated with the position sought.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 3302, and 7301; and Executive Orders 10577, 11222, and 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

PURPOSE(S):

These records are used by Federal Labor Relations Authority appointing and selecting officials to examine individuals seeking employment by consideration of factors present in such records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to a Federal Labor Relations Authority decision concerning the hiring or retention of an employee, the issuance of a security clearance, the classifying of jobs, or the letting of a contract.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request if that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the Office of Personnel Management in the production of summary analytical studies in support of the function for which the records are collected and maintained or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way to make the data individually identifiable by inference.

h. To disclose, in response to a request for discovery or for appearence of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.I95STORAGE:

These records are maintained on cards or in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in locked metal file cabinets or in a secured room with access limited to personnel whose official duties require access.

RETEBTUIB AND DISPOSAL:

Records for individuals who are selected for position at the Federal Labor Relations Authority may be disposed of after the individual is appointed, or they may be retained for one year or until the employee separates, whichever is earlier. Records for other applicants are retained while the individual is under consideration for

employment and are disposed of when the individual's application is disposed of. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Social Security Number.

Individuals making inquires must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information in the system should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Social Security Number.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Certain materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted From Certain Provisions of the Act," which appears below, indicates the kinds of material exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of other, nonexempt information in the system, should contact the System Manager, furnishing the following information:

a. Name.

b. Date of birth.

c. Social Security Number.

Individuals requesting amemdment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Federal Labor Relations Authority officials.

c. Sources from whom information was requested, such as former employers, references, or schools.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigatory material compiled during the preemployment inquiry stage of the selection process and designed solely for the purpose of determining eligibility or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of the source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

For material in this system meeting these criteria, Federal Labor Relations Authority has claimed the (k)(5) exemption from the following provisions of the Act:

a. 5 U.S.C. 552a(c)(3)—This provision concerns providing an accounting of disclosure to the individual whom the records are about; and

b. 5 U.S.C. 552a(d)—This provision regards access to and amendment of records.

FLRA/INTERNAL-6

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with the Federal Labor Relations Authority pursuant to Office of Personnel Management regulations regarding Agency Administrative Grievance Systems (5 CFR 771).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees under 5 CFR 771 of the Authority's regulations. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original decision, and related correspondence and exhibits. This system includes files and records of internal grievances, and of arbitration systems that may be established through negotiations with the union representing agency employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p218, E.O. 10987, 3 CFR 1959–1963 Comp., p519, agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

PURPOSE(S):

These records are used to store and document grievances based on employee dissatisfaction relative to actions taken within the discretion of the Federal Labor Relations Authority.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to

requesting the agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the System Manager. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the System Manager.

Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited to scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records of correct factual errors should contact the System Manager.

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting amendment must follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment to records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Testimony of witnesses.

c. Agency officials.

d. Organizations or persons providing related correspondence.

FLRA/Internal-7

SYSTEM NAME:

Employee Incentive Award and Recognition Files.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Labor Relations Authority employees who have filed suggestions or who were nominated for cash awards for performance, honorary awards under the Incentive Awards Program, and quality step increases.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes copies of employees suggestions, and information relating to the Federal Labor Relations Authority's disposition of the suggestions, including amounts of awards for adopted suggestions, evaluations, and amounts of benefits to the Government.

The system also contains information related to the nomination of an employee for a cash award for performance, an award under the Incentive Awards Program, or for a quality step increase, including justifications submitted with the nominations and the Federal Labor Relations Authority's disposition of the nominations and identifying information regarding the employee, including name, grade, occupation, and employing unit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4501 *et seq.* 5 U.S.C. 5336.

PURPOSE(S):

These records are collected and maintained to provide a basis for granting recognition to Federal Labor Relations Authority's employees in accordance with the provisions of the Federal Labor Relations Authority's Incentive Awards plan or for quality step increases; to document employees' contributions to the Suggestion Program; and to determine and verify employees' eligibility for subsequent awards. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To consider and select employees for Incentive awards and other honors and to publicize those granted. This may include disclosure to other public (Federal, State, or local) or private organizations, including news media, which grant or publicize employee awards or honors.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the sources of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to a Federal Labor Relations Authority decision concerning the adoption of a suggestion or the approval of the employee's nomination for an incentive award or quality step increase.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an indiviudal, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are stored in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in a secured area with access limited to those whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained for 4 fiscal years. Expired records are shredded or burned.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to record (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The employee who filed the suggestion.

b. Individuals who nominated the employee for an incentive award, or quality step increase.

c. Personnel documents of the Federal Labor Relations Authority.

FLRA/Internal-8

SYSTEM NAME:

Employee Assistance Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Labor Relations Authority employees who have been counselled for abuse of alcohol or drugs, or personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to employees' visits to the Personnel Office for the purpose of receiving counselling for drug abuse, alcoholism, or behavioral or emotional problems. Such records would include data such as: employee name; nature of problem; summation of counselling given; date of session; and information relating to referral of employee to a professional person (professional counselor, physician, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1108, 42 U.S.C. 4561, 44 U.S.C. 3101, and Public Laws 91–616 and 92–255.

PURPOSE(S):

These records are used to document the nature of the individual's problem and progress and, when necessary, to refer individuals to appropriate community or private resources for treatment or rehabilitation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

To disclose information to the Department of Justice or other appropriate Federal agencies in defending claims against the United States, when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Federal Labor Relations Authority in connection with such an individual.

Such disclosures will be restrictively made; in particular, disclosures of information pertaining to an individual with a history of alcohol or drug abuse will be limited in compliance with the restrictions of the confidentiality of Alcohol and Drug Abuse Patient Records regulations, 45 CFR Part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked file cabinets with access limited to those persons whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained for 1 year after the employee's last contact with the counsellor, or until the employee's separation or transfer, whichever comes first. Records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Federal Labor Relations Authority employees wishing to inquire whether this system of records contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Federal Labor Relations Authority employees wishing to request access to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals requesting amendment must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.5).

CONTESTING RECORDS PROCEDURES:

Federal Labor Relations Authority employees wishing to request amendment to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom it applies.

b. The Employee Assistance Counsellor who records the counselling session.

FLRA/INTERNAL–9

SYSTEM NAME:

Federal Executive Development Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Labor Relations Authority employees at the GS–15 or equivalent level who applied for the Federal Executive Development Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain demographic information and background data on the experience, education, awards and career interests of applicants, their agency recommendations for the program, and supervisory evaluations. Note—this system does not include records of the evaluation process used by the selection panel in choosing the finalists, and data on assignments and progress under the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 11815, 12027, and 9397.

PURPOSE(S):

These records are maintained and used by the Federal Labor Relations Authority to nominate employees for the Federal Executive Development Program. When an employees is accepted for the Program, the records may be used to arrange work assignments and to monitor progress on assignments under the program. The Federal Labor Relations Authority may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to agencies in which the selected employee is or will be performing work assignments under the Federal Executive Development Program.

c. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually indentifiable by inference.

d. To disclose information to the appropriate Federal, State, or local

agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are kept in locked cabinets and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are filed alphabetically by year. They are retained for five years, and are disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should address their inquiries to the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals requesting access must follow the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the record pertains.

b. The individual's supervisor and other management officials.

c. Agency records.

FLRA/INTERNAL-10

SYSTEM NAME:

Employee Locator Card Files.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424 or Federal Labor Relations Authority's regional offices (See list of regional offices in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Federal Labor Relations Authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location and telephone extension of individual Federal Labor Relations Authority employees. The system also contains the home address and telephone number of the employee, and the name, address, and telephone number of an individual to contact in the event of a medical or other emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Information is collected for this system for use in preparing telephone directories oif the extensions of Federal Labor Relations Authority employees. The records also serve to identify an individual for Federal Labor Relations Authority officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

c. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained on cards.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in secured areas and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained as long as the individual is an employee of the Federal Labor Relations Authority. Expired records are destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Federal Labor Relations Authority employees wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must supply their full name for their records to be located and identified.

Individuals making inquiries must comply with the Federal labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Federal Labor Relations Authority employees wishing to request access to records about them should contact the System Manager. Individuals must supply their full name for their records to be located and identified.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Federal Labor Relations Authority employees may amend information in these records at any time by resubmitting the cards. Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the System Manger. Individuals must supply their full name for their records to be located and identified.

Individuals requesting amendment must follow the FLRA's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual who is the subject of the record.

FLRA/INTERNAL-11

SYSTEM NAME:

Training Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424 or Federal Labor Relations Authority regional offices (See list of regional offices in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of FLRA who have completed Government-sponsored training.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an official personnel file copy and a subject-m[matter file copy of an authorization for training. Information on this copy contains the following: name; date of birth; years of civilian service; social security number; home address and telephone number; office address and telephone number; as well as applicable information relating to the course (title, cost, location, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 41 of Title 5, U.S.C. and Executive Order 11348.

PURPOSE(S):

These records are used to nominate and/or approve Federal Labor Relations Authority employees for training courses sponsored by the agency or non-government sources and for recording completion of scheduled training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

c. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contian individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To provide information to officials of labor organizations recognized under the Civil Service Reform Act, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

g. To disclose information to officials of the Merit Systems Protection Board (including the Office of the Sepcial Counsel), or the Equal Employment Opportunity Commisison when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in three-ring binders.

RETRIEVABILITY:

These records are retrieved by the name of the trainee on whom the records are maintained.

SAFEGUARDS:

These records are stored in locked metal cabinets and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are retained for three fiscal years and disposed of by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the System Manager. Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Social Security Number.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendent of their records should contact the System Manager.

Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Social Security Number.

Individuals must also comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Federal Labor Relations officials.

FLRA/INTERNAL-12

SYSTEM NAME:

Performance Evaluation/Rating Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424 or Federal Labor Relations Authority regional offices (See list of regional offices in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FLRA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to periodic supervisory assessments of the work performance of each Federal Labor Relations Authority employee. the various elements of the system relate to: probationers, trainess, employees, supervisors, executive performance, and performance rating. These records are official copies of performance appraisals which have been conducted on a regularly scheduled basis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 43 of Title 5, U.S.C.

PURPOSE(S):

The primary purpose of this system is to provide a means for evaluating the performance of employees in order to strengthen supervisor-employee understanding and relationships; recognize the merits of employees who have contributed to efficiency and economy in government operations; determine methods to increase the effectiveness with which employees do their work; and identify unsatisfactory employees who should be reassigned or separated.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

c. By the National Archives and Records Service (General Services Administration), in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

d. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual indentifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

g. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

h. To disclose information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrievable by name of the employee on whom the information is maintained.

SAFEGUARDS:

These records are stored in lockable metal file cabinets or insecured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Performance ratings may be disposed of after two years and performance evaluations related to merit promotion after five years. Records to be destroyed are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire as to whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Current or former Office organization.

c. If former employee, date of separation.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Current or former Office organization.

c. If former employee, dae of separation.

Individuals requesting access must also comply with Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals may request amendment of their records to correct factual errors

by contacting the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Current or former Office organization.

c. If former employee, date of separation.

Individuals requesting amendment must follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system records is provided by the individual to whom the information pertains, by supervisors, and by higher level Federal Labor Relations Authority officials in the individual's organization.

FLRA/INTERNAL-13

SYSTEM NAME:

Intern Program and Upward Mobility Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Labor Relations Authority employees who participated in the Upward Mobility Program, the Cooperative Education Program, and/or the Legal Intern Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

SF 171 (Personal Qualifications Statement) containing employment history data and Individual Development Plans.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 41 of Title 5, U.S.C.

PURPOSE(S):

The purpose of the file is to document internships and upward mobility assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

c. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study my be structured in such a way as to make the data individually identifiable by inference.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in pending judicial or administrative proceedings.

h. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

These records are retained for five years and disposed of by building or shredding.

SYSTEM MANAGER(S) ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must also comply with the Federal Labor Relations Authority's Privacy Act regulations regarding existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendments must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Federal Labor Relations Authority officials.

FLRA/INTERNAL-14

SYSTEM NAME:

Motor Vehicle Operators Records and Motor Vehicle Accident Report Cards.

SYSTEM LOCATION:

Director of Administration, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Federal Labor Relations Authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains documents related to the authorization and issuance to an individual of a U.S. Government motor vehicle operator's identification card. Also included are reports, correspondence and fiscal documents concerning motor vehicle accidents occurring in Government owned or leased motor vehicles or privately owned motor vehicles while on official business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 171 of Title 28, United States Code.

PURPOSE(S):

These records serve to document issuance of U.S. Government motor vehicle operator's identification cards, motor vehicle accident reports and related documents which may be used in claims settlement litigation regarding an accident involving a Government motor vehicle or a leased or privately owned motor vehicle while being used on official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of a civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to a Federal Labor Relations Authority decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a grant or other benefit.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and Records Service (General Services Administration) in Records Management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of jobs, or the awarding of a contract, license, grant, or other benefit.

h. To disclose information to the General Services Administration about motor vehicle accidents involving Government-owned or leased motor vehicles.

i. To disclose information to insurance carriers about accidents involving privately owned motor vehicles.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintainted in file folders and on indexed application cards.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Motor vehicle operator records are maintained for three years after the separation of the employee (operator) and are destroyed by shredding or burning.

Motor vehicle accident reports are maintained for six years after the date of the report, except in cases involving litigation. In cases involving litigation, records are to be maintained for a period of seven years. Records to be destroyed are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact System Manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request an amendment to their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendment also follow must Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the record pertains.

b. Federal Labor Relations Authority employees and other parties involved in the motor vehicle accident.

c. Witnesses to the accident.

d. Police reports and reports of investigations conducted by Federal Labor Relations Authority investigators.

e. Officials of the Federal Labor Relations Authority and the General Services Administration.

FLRA/INTERNAL-15

SYSTEM NAME:

Pay, Leave and Travel Records.

SYSTEM LOCATION:

Office of Administration, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Federal Labor Relations Authority.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

This system contains various records relating to pay, leave, and travel. This includes information such as: name, date of birth, Social Security Number, home address, grade, employing organization, timekeeper number, salary, pay plan, number of hours worked, leave accrual rate, usage, and balance; Civil Service Retirement contributions; FICA withholdings; Federal, State and local tax withholdings; Federal Employees' Group Life Insurance withholdings; Federal Employee's Health Benefits withholdings; charitable deductions; allotments to financial organizations; garnishment documents; savings bond allotments; and travel expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66a; 5 U.S.C. 5501, 5535 *et seq.*, 5701, and 6301 *et seq.*; Executive Order 9397.

PURPOSE(S):

These records are used to administer the pay, leave and travel requirements of the Federal Labor Relations Authority. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. By the Department of the Treasury to issue checks and U.S. Savings Bonds.

b. By the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.

c. By state offices of unemployment compensation in connection with claims filed by former Federal Labor Relations Authority employees for unemployment compensation.

d. By Federal Employees Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims for records reconciliations.

e. To disclose information to the Internal Revenue Service and state and local tax authorities.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to any source from which additional information is requested relevant to a Federal Labor Relations Authority determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

h. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

i. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

j. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

k. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

l. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

m. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

n. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

o. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), the Office of Personnel Management and its General Counsel and the Equal Employment Opportunity Commission in performance of their authorized duties. Information may also be disclosed to the General Accounting Office and the General Services for auditing purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders and loose leaf binders and on cards and magnetic tapes.

RETRIEVABILITY:

These records are retrieved by the names or Social Security Numbers of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured facility and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time, in accordance with GSA General Records Schedule 2. Disposal of manual records is by shredding or burning; magnetic tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager. Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing access to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals requesting amendment must follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the record pertains.

b. Federal Labor Relations Authority officials responsible for pay, leave, and travel requirements.

c. Other official personnel documents of the Federal Labor Relations Authority.

FLRA/Internal-16

SYSTEM NAME:

Occupational Injury and Illness Records.

SYSTEM LOCATION:

Office of Director of Personnel
1900 E Street NW.
Washington, D.C. 20424

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Labor Relations Authority employees who have reported a work-related injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include information pertaining to the complete history of the employee's occupational injury or illness, including any doctors' or investigative reports submitted, and the disposition of claims for compensation filed under the Federal Employees Compensation Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, as further defined in OMB Circular A-72.

PURPOSE(S):

The purpose of these records is to document injuries as well as resultant claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to Federal Labor Relations Authority officials and employees in processing reports of occupational injury or illness and claims for compensation under the Federal Employees Compensation Act.

b. By the Office of Personnel Management in the production of summary analytical studies in support of the function for which the records are collected and maintained or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually indentifiable by inference.

c. To the U.S. Department of Labor for purposes of adjudicating claims for compensation under the Federal Employees Compensation Act.

d. To the U.S. Department of Human and Health Services in the administration of public health service programs.

e. To a court of competent jurisdiction for adjudicating claims arising under the Federal Employees Compensation Act.

f. To an investigator utilized by Federal Labor Relations Authority to obtain information relevant to a claim arising under the Federal Employees Compensation Act.

g. To the appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

h. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To individuals who need the information in connection with the processing of an appeal, grievance or complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained on forms and related correspondence.

RETRIEVABILITY:

These records are retrieved alphabetically by the name of the individual on whom the records are maintained.

SAFEGUARDS:

These records are maintained in lockable file safes. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

These records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals inquiring whether this system contains information about them should contact the System Manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding existence of records. (5 CFR 2412.4)

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals wishing to request access to records must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records. (5 CFR 2412.5)

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment to their records should contact the System Manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.

Individuals requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendments to records. (5 CFR 2412.10)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. Forms completed by the employee.
b. Witnesses.
c. Investigators.
d. Employee's supervisor.
e. Claims examiners of the U.S. Department of Labor.
f. Doctors' statements.

Appendixg

Regional Offices:

Region I: Federal Labor Relations Authority, 441 Stuart Street, 8th Floor, Boston, MA 02116.

Region II: Federal Labor Relations Authority, Room 241, 26 Federal Plaza, New York, NY 10007.

Region III: Federal Labor Relations Authority, 1133 15th Street, NW., Suite 300, Washington, D.C. 20005.

Region IV: Federal Labor Relations Authority, Room 501, North Wing, 1776 Peachtree, NW., Atlanta, GA 30309.

Region V: Federal Labor Relations Authority, Room 1638, Dirksen Federal Building, 219 South Dearborn Street, Chicago, IL 60604.

Region VI: Federal Labor Relations Authority, Room 450, Old Post Office Building, Bryan and Ervay Street, Dallas, TX 75221.

Region VII: Federal Labor Relations Authority, Suite 680, City Center Square Building, 1100 Main Street, Kansas City, MO 64105.

Region VIII: Federal Labor Relations Authority, 350 S. Figueroa Street, 10th Floor, Los Angeles, CA 90071.

Region IX: Federal Labor Relations Authority, 450 Golden Gate Avenue, Room 11408, P.O. Box 36016, San Francisco, CA 94102.

Area Offices:

Federal Labor Relations Authority, William J. Green Federal Building, 600 Arch Street, Room 1424, Philadelphia, PA 19106.

Federal Labor Relations Authority, Room 821, Federal Office Building, 1240 E. Ninth Street, Cleveland, OH 44199.

Federal Labor Relations Authority, Federal Building & U.S. Customs House, Room 170, 721—19th Street, Denver, Colorado 80202.

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Part IV

Environmental Protection Agency

Guidelines for Specification of Disposal Sites for Dredged or Fill Material

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 230

[WH-FRL 1647-7]

Guidelines for Specification of Disposal Sites for Dredged or Fill Material

AGENCY: Environmental Protection Agency.

ACTION: Rule.

SUMMARY: The 404(b)(1) Guidelines are the substantive criteria used in evaluating discharges of dredged or fill material under section 404 of the Clean Water Act. These Guidelines revise and clarify the September 5, 1975 Interim final Guidelines regarding discharge of dredged or fill material into waters of the United States in order to:

(1) Reflect the 1977 Amendments of Section 404 of the Clean Water Act (CWA);

(2) Correct inadequacies in the interim final Guidelines by filling gaps in explanations of unacceptable adverse impacts on aquatic ecosystems and by requiring documentation of compliance with the Guidelines; and

(3) Produce a final rulemaking document.

EFFECTIVE DATE: These Guidelines will apply to all 404 permit decisions made after March 23, 1981. In the case of civil works projects of the United States Army Corps of Engineers involving the discharge of dredged or fill material for which there is no permit application or permit as such, these Guidelines will apply to all projects on which construction or dredging contracts are issued, or on which dredging is initiated for Corps operations not performed under contract, after October 1, 1981. In the case of Federal construction projects meeting the criteria in section 404(r), these Guidelines will apply to all projects for which a final environmental impact statement is filed with EPA after April 1, 1981.

FOR FURTHER INFORMATION CONTACT: Joseph Krivak, Director, Criteria and Standards Division (WH-585), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 755-0100.

SUPPLEMENTARY INFORMATION:

Background

The section 404 program for the evaluation of permits for the discharge of dredged or fill material was originally enacted as part of the Federal Water Pollution Control Amendments of 1972. The section authorized the Secretary of the Army acting through the Chief of Engineers to issue permits specifying disposal sites in accordance with the section 404(b)(1) Guidelines. Section 404(b)(2) allowed the Secretary to issue permits otherwise prohibited by the Guidelines, based on consideration of the economics of anchorage and navigation. Section 404(c) authorized the Administrator of the Environmental Protection Agency to prohibit or withdraw the specification of a site, upon a determination that use of the site would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

Under section 404(b)(1), the Guidelines are to be based on criteria comparable to those in section 403(c) of the Act, for the territorial seas, contiguous zone, and oceans. Unlike 403(c), 404 applies to all waters of the United States. Characteristics of waters of the United States vary greatly, both from region to region and within a region. There is a wide range of size, flow, substrate, water quality, and use. In addition, the materials to be discharged, the methods of discharge, and the activities associated with the discharge also vary widely. These and other variations make it unrealistic at this time to arrive at numerical criteria or standards for toxic or hazardous substances to be applied on a nationwide basis. The susceptibility of the aquatic ecosystem to degradation by purely physical placement of dredged or fill material further complicates the problem of arriving at nationwide standards. As a result, the Guidelines concentrate on specifying the tools to be used in evaluating and testing the impact of dredged or fill material discharges on waters of the United States rather than on simply listing numerical pass-fail points.

The first section 404(b)(1) Guidelines were promulgated by the Administrator in interim final form on September 5, 1975, after consultation with the Corps of Engineers. Since promulgation of the interim final Guidelines, the Act has been substantially amended. The Clean Water Act of 1977 established a procedure for transferring certain permitting authorities to the states, exempted certain discharges from any section 404 permit requirements, and gave the Corps enforcement authority. These amendements also increased the importance of the section 404(b)(1) Guidelines, since some of the exemptions are based on alternative ways of applying the Guidelines. These changes, plus the experience of EPA and the Corps in working with the interim final Guidelines, have prompted a revision of the Guidelines. The proposed revision attempted to reorganize the Guidelines, to make it clearer what had to be considered in evaluating a discharge and what weight should be given to such considerations. The proposed revision also tightened up the requirements for the permitting authority's documentation of the application of the Guidelines.

After extensive consultation with the Corps, the proposed revisions were put out for public comment (44 FR 54222, September 18, 1979). EPA has reviewed, and, after additional consultation with the Corps, revised the proposal in light of these comments. This preamble addresses the significant comments received, explains the changes made in the regulation, and attempts to clear up some misunderstandings which were revealed by the comments. Response to Significant Comments

Regulation Versus Guideline

A number of commenters objected to the proposed Guidelines on the grounds that they were too "regulatory." These commenters argued that the term "guidelines" which appears in section 404(b)(1) requires a document with less binding effect than a regulation. EPA disagrees. The Clean Water Act does not use the word "guideline" to distinguish advisory information from regulatory requirements. Section 404(b)(2) clearly demonstrates that Congress contemplated that discharges could be "prohibited" by the Guidelines. Section 403 (which is a model for the 404 (b)(1) Guidelines) also provides for "guidelines" which are clearly regulatory in nature. Consequently, we have not changed the regulation to make it simply advisory. Of course, as the regulation itself makes clear, a certain amount of flexibility is still intended. For example, while the ultimate conditions of compliance are "regulatory", the Guidelines allow some room for judgment in determining what must be done to arrive at a conclusion that those conditions have or have not been met. See, for example, § 230.6 and § 230.60, and introductory sentence in § 230.10.

Statutory Scheme and How the Guidelines Fit Into It

A number of commenters with objections appeared confused about EPA's role in the section 404 program. Some wondered why EPA was issuing Guidelines since EPA could stop an unacceptable discharge under section 404(c). Others were uncertain how the

Guidelines related to other section 404 regulations.

The Clean Water Act prohibits the discharge of dredged or fill material except in compliance with section 404. Section 404 sets up a procedure for issuing permits specifying discharge sites. Certain discharges (e.g. emergency repairs, certain farm and forest roads, and other discharges identified in sections 404(f) and (r)) are exempted from the permit requirements. The permitting authority (either the Corps of Engineers or an approved State program) approves discharges at particular sites through application of the section 404(b)(1) Guidelines, which are the substantive criteria for dredged and fill material discharges under the Clean Water Act. The Corps also conducts a Public Interest Review, which ensures that the discharge will comply with the applicable requirements of other statutes and be in the public interest. The Corps or the State, as the case may be, must provide an opportunity for a public hearing before making its decision whether to approve or deny. If the Corps concludes that the discharge does not comply with the Guidelines, it may still issue the permit under 404(b)(2) if it concludes that the economics of navigation and anchorage warrant. Section 404(b)(2) gives the Secretary a limited authority to issue permits prohibited by the Guidelines; it does not, as some commenters suggested, require the Guidelines to consider the economics of navigation and anchorage. Conversely, because of 404(b)(2), the fact that a discharge of dredged material does not comply with the Guidelines does *not* mean that it can never be permitted. The Act recognizes the concerns of ports in section 404(b)(2), not 404(b)(1). Many readers apparently misunderstood this point.

EPA's role under section 404 is several-fold. First, EPA has the responsibility for developing the 404(b)(1) Guidelines in conjunction with the Corps. Second, EPA reviews permit applications and gives its comments (if any) to the permitting authority. The Corps may issue a permit even if EPA comments adversely, after consultation takes place. In the case of state programs, the State director may not issue a permit over EPA's unresolved objection. Third, EPA has the responsibility for approving and overseeing State 404 programs. In addition, EPA has enforcement responsibilities under section 309. Finally, under either the Federal or State program, the Administrator may also prohibit the specification of a discharge site, or restrict its use, by following the procedures set out in section 404(c), if he determines that discharge would have an unacceptable adverse effect on fish and shellfish areas (including spawning and breeding areas), municipal water supplies, wildlife or recreation areas. He may do so in advance of a planned discharge or while a permit application is being evaluated or even, in unusual circumstances, after issuance of a permit. (See preamble to 40 CFR Part 231, 44 FR 58076, October 9, 1979.) If the Administrator uses 404(c), he may block the issuance of a permit by the Corps or a State 404 program. Where the Administrator has exercised his section 404(c) authority to prohibit, withhold, or restrict the specification of a site for disposal, his action may not be overridden under section 404(b)(2). The fact that EPA has 404(c) authority does not lessen EPA's responsibility for developing the 404(b)(1) Guidelines for use by the permitting authority. Indeed, if the Guidelines are properly applied, EPA will rarely have to use its 404(c) veto.

The Clean Water Act provides for several uses of the Guidelines in addition to the individual permit application review process described above. For example, the Corps or an approved state may issue General permits for a category of similar activities where it determines, on the basis of the 404(b)(1) Guidelines, that the activities will cause only minimal adverse environmental effects both individually and cumulatively (Section 404(e) and (g)(1)). In addition, some of the exemptions from the permit requirements involve application of the Guidelines. Section 404(r) exempts discharges associated with Federal construction projects where, among other things, there is an Environmental Impact Statement which considers the 404(b)(1) Guidelines. Section 404(f)(1)(F) exempts discharges covered by best management practices (BMP's) approved under section 208(b)(4)(B) and (c), the approval of which is based in part on consistency with the 404(b)(1) Guidelines.

Several commenters asked for a statement on the applicability of the Guidelines to enforcement procedures. Under sections 309, 404(h)(1)(G), and 404(s), EPA, approved States, and the Corps all play a role in enforcing the section 404 permit requirements. Enforcement actions are appropriate when someone is discharging dredged or fill material without a required permit, or violates the terms and conditions of a permit. The Guidelines as such are generally irrelevant to a determination of either kind of violation, although they may represent the basis for particular permit conditions which are violated. Under the Corps' procedural regulations, the Corps may accept an application for an after-the-fact permit, in lieu of immediately commencing an enforcement action. Such after-the-fact permits may be issued only if they comply with the 404(b)(1) Guidelines as well as other requirements set out in the Corps' regulations. Criteria and procedures for exercising the various enforcement options are outside the scope of the section 404(b)(1) Guidelines.

Some commenters suggested that we either include specific permit processing procedures or that we cross-reference regulations containing them. Such procedures are described in 33 CFR Part 320–327 (Corps' procedures) and in 40 CFR Part 122–124 (minimum State procedures). When specific State 404 programs are approved, their regulations should also be consulted.

How Future Changes in the Testing Provision Relate to Promulgation of This Final Rule

The September 18, 1979, proposal contained testing provisions which were essentially the same as those in the Interim Final regulations. The Preamble to that proposal explained that it was our intention to propose changes in the testing provisions, but that a proposal was not yet ready. Consequently, while we have been revising the rest of the Guidelines, we have also been working on a proposal for reorganizing and updating the testing provisions. Now that we have finalized the rest of the Guidelines, two options are available to us. First, we could delay issuing any final revisions to our 1979 proposal until we could propose a revised testing package, consider comments on it, and finalize the testing provisions. We could then put together the Guidelines and the revised testing section in one final regulation. The 1975 interim final Guidelines would apply in their entirety until then. Second, we could publish the final Guidelines (with the 1975 testing provisions) and simultaneously propose changes to the testing provision. It is our present belief that proposed changes to the testing provision would not affect the rest of the Guidelines, but the public would be allowed to comment on any inconsistencies it saw between the rest of the Guidelines and the testing proposal. Then, when the comments to the testing proposal had been considered, we would issue a new final regulation incorporating both the previously promulgated final Guidelines and the final revised testing provision.

We have selected the second option because this approach ensures that needed improvements to the Guidelines are made effective at the earliest possible date, it gives the public ample opportunity to comment on the revised testing section, and it maintains the 1975 testing requirements in effect during the interim which would be the case in any event.

Guideline Organization

Many readers objected to the length and complexity of the Guidelines. We have substantially reorganized the regulation to eliminate duplicative material and to provide a more logical sequence. These changes should make it easier for applicants to understand the criteria and for State and Corps permit evaluators and the Administrator to apply the criteria. Throughout the document, we have also made numerous minor language changes to improve the clarity of the regulations, often at the suggestion of commenters.

Following general introductory material and the actual compliance requirements, the regulations are now organized to more closely follow the steps the permitting authority will take in arriving at his ultimate decision on compliance with the Guidelines.

By reorganizing the Guidelines in this fashion, we were also able to identify and eliminate duplicative material. For example, the proposed Guidelines listed ways to minimize impacts in many separate sections. Since there was substantial overlap in the specific methods suggested in those sections, we consolidated them into new Subpart H. Other individual sections have been made more concise. In addition, we have decreased the number of *comments*, moving them to the Preamble or making them part of the Regulation, as appropriate.

General Permits

When issued after proper consideration of the Guidelines, General permits are a useful tool in protecting the environment with a minimum of red tape and delay. We expect that their use will expand in the future.

Some commenters were confused about how General permits work. A General permit will be issued only after the permitting authority has applied the Guidelines to the class of discharges to be covered by the permit. Therefore, there is no need to repeat the process at the time a particular discharge covered by the permit takes place. Of course, under both the Corps' regulations and EPA's regulations for State programs, the permitting authority may suspend General permits or require individual permits where environmental concerns make it appropriate. For example, cumulative impacts may turn out to be more serious than predicted. This regulation is not intended to establish the *procedures* for issuance of General permits. That is the responsibility of the permitting authority in accordance with the requirements of section 404.

Burden of Proof

A number of commenters objected to the presumption in the regulations in general, and in proposed § 230.1(c) in particular, that dredged or fill material should not be discharged unless it is demonstrated that the planned discharge meets the Guidelines. These commenters thought that it was unfair and inconsistent with section 404(c) of the Act.

We disagree with these objections, and have retained the presumption against discharge and the existing burden of proof. However, the section has been rewritten for clarity.

The Clean Water Act itself declares a national goal to be the elimination of the discharge of pollutants into the navigable waters (section 101(a)(1)). This goal is implemented by section 301, which states that such discharges are unlawful except in compliance with, *inter alia*, section 404. Section 404 in turn authorizes the permitting authority to allow discharges of dredged or fill material if they comply with the 404(b)(1) Guidelines. The statutory scheme makes it clear that discharges shall not take place until they have been found acceptable. Of course, this finding may be made through the General permit process and the statutory exemptions as well as through individual permits.

The commenters who argued that section 404(c) shifts the usual burden to the EPA Administrator misunderstood the relationship between section 404(c) and the permitting process. The Administrator's authority to prohibit or restrict a site under section 404(c) operates independently of the Secretary of the Army's permitting authority in 404(a). The Administrator may use 404(c) whether or not a permit application is pending. Conversely, the Secretary may deny a permit on the basis of the Guidelines, whether or not EPA initiates a 404(c) proceeding. If the Administrator uses his 404(c) "veto," then he does have the burden to justify his action, but that burden does not come into play until he begins a 404(c) proceeding (See 40 CFR Part 231).

Toxic Pollutants

Many commenters objected strenuously to the presumptions in the Guidelines that toxic pollutants on the section 307(a)(1) list are present in the aquatic environment unless demonstrated not to be, and that such pollutants are biologically available unless demonstrated otherwise. These commenters argued that rebutting these presumptions could involve individual testing for dozens of substances every time a discharge is proposed, imposing an onerous task.

The proposed regulation attempted to avoid unnecessary testing by providing that when the § 230.22(b) "reason to believe" process indicated that toxics were not present in the discharge material, no testing was required. On the other hand, contaminants other than toxics required testing if that same "reason to believe" process indicated they might be present in the discharge material. This is in fact a distinction without a difference. In practical application, toxic and non-toxic contaminants are treated the same; if either may be there, tests are performed to get the information for the determinations; if it is believed they are not present, no testing is done. Because the additional presumption for toxics did not actually serve a purpose, and because it was a possible source of confusion, we have eliminated it, and now treat "toxics" and other contaminants alike, under the "reason to believe test" (§ 230.60). We have provided in § 230.3 a definition of "contaminants" which encompasses the 307(a)(1) toxics.

Water Dependency

One of the provisions in the proposed Guidelines which received the most objections was the so-called "water dependency test" in the proposed § 230.10(e). This provision imposed an additional requirement on fills in wetlands associated with non-water dependent activities, namely a showing that the activity was "necessary." Many environmentalists objected to what they saw as a substantial weakening of the 1975 version of the water dependency test. Industry and development-oriented groups, on the other hand, objected to the "necessary" requirement because it was too subjective, and to the provision as a whole to the extent that it seemed designed to block discharges in wetlands automatically.

We have reviewed the water dependency test, its original purpose, and its relationship to the rest of the Guidelines in light of these comments. The original purpose, which many commenters commended, was to recognize the special values of wetlands and to avoid their unnecessary destruction, particularly when

practicable alternatives were available in non-aquatic areas to achieve the basic purposes of the proposal. We still support this goal, but we have changed the water-dependency test to better achieve it.

First, we agree with the comments from both sides that the "necessary" test imposed by the 1979 proposal is not likely to be workable in practice, and may spawn more disputes than it settles. However, if the "necessary" test is simply deleted, section 230.10(e) does not provide any special recognition of or protection for wetlands, and thus defeats its purpose. Furthermore, even if the "necessary" test were retained, the provision applies only to discharges of fill material, not discharges of dredged material, a distinction which lessens the effectiveness of the provision. Thus, we have decided, in accordance with the comments, that the proposal is unsatisfactory.

We have therefore decided to focus on, round out, and strengthen the approach of the so-called "water dependency" provision of the 1975 regulation. We have rejected the suggestion that we simply go back to the 1975 language, in part because it would not mesh easily with the revised general provisions of the Guidelines. Instead, our revised "water dependency" provision creates a presumption that there are practicable alternatives to "non-water dependent" discharges proposed for special aquatic sites. "Non-water dependent" discharges are those associated with activities which do not require access or proximity to or siting within the special aquatic site to fulfill their basic purpose. An example is a fill to create a restaurant site, since restaurants do not need to be in wetlands to fulfill their basic purpose of feeding people. In the case of such activities, it is reasonable to assume there will generally be a practicable site available upland or in a less vulnerable part of the aquatic ecosystem. The mere fact that an alternative may cost somewhat more does not necessarily mean it is not practicable (see § 230.10(a)(2) and discussion below). Because the applicant may rebut the presumption through a clear showing in a given case, no unreasonable hardship should be worked. At the same time, this presumption should have the effect of forcing a hard look at the feasibility of using environmentally preferable sites. This presumption responds to the overwhelming number of commenters who urged us to retain a water dependency test to discourage avoidable discharges in wetlands.

In addition, the 1975 provision effectively created a special, irrebuttable presumption that alternatives to wetlands were always less damaging to the aquatic ecosystem. Because our experience and the comments indicate that this is not always the case, and because there could be substantial impacts on other elements of the environment and only minor impacts on wetlands, we have chosen instead to impose an explicit, but rebuttable, presumption that alternatives to discharges in special aquatic sites are less damaging to the aquatic ecosystem and are environmentally preferable. Of course, the general requirement that impacts on the aquatic ecosystem not be unacceptable also applies. The legislative history of the Clean Water Act, Executive Order 11990, and a large body of scientific information support this presumption.

Apart from the fact that it may be rebutted, this second presumption reincorporates the key elements of the 1975 provision. Moreover, it strengthens it because the recognition of the special environmental role of wetlands now applies to all discharges in special aquatic sites, whether of dredged or fill material, and whether or not water dependent. At the same time, this presumption, like the first one described above, retains sufficient flexibility to reflect the circumstances of unusual cases.

Consistent with the general burden of proof under these Guidelines, where an applicant proposes to discharge in a special aquatic site it is his responsibility to persuade the permitting authority that both of these presumptions have clearly been rebutted in order to pass the alternatives portion of these Guidelines.

Therefore, we believe that the new § 230.10(a)(3), which replaces proposed 230.10(e), will give special protection to wetlands and other special aquatic sites regardless of material discharged, allay industry's concerns about the "necessary" test, recognize the possibility of impacts on air and upland systems, and acknowledge the variability among aquatic sites and discharge activities.

Alternatives

Some commenters objected at length to the scope of alternatives which the Guidelines require to be considered, and to the requirement that a permit be denied unless the least harmful such alternative were selected. Others wrote to urge us to retain these requirements. In our judgment, a number of the objections were based on a misunderstanding of what the proposed alternatives analysis required. Therefore, we have decided to clarify the regulation, but have not changed its basic thrust.

Section 403(c) clearly requires that alternatives be considered, and provides the basic legal basis for our requirement. While the statutory provision leaves the Agency some discretion to decide *how* alternatives are to be considered, we believe that the policies and goals of the Act, as well as the other authorities cited in the Preamble to the proposed Guidelines, would be best served by the approach we have taken.

First, we emphasize that the only alternatives which must be considered are *practicable* alternatives. What is practicable depends on cost, technical, and logistic factors. We have changed the word "economic" to "cost". Our intent is to consider those alternatives which are reasonable in terms of the overall scope/cost of the proposed project. The term economic might be construed to include consideration of the applicant's financial standing, or investment, or market share, a cumbersome inquiry which is not necessarily material to the objectives of the Guidelines. We consider it implicit that, to be practicable, an alternative must be capable of achieving the basic purpose of the proposed activity. Nonetheless, we have made this explicit to allay widespread concern. Both "internal" and "external" alternatives, as described in the September 18, 1979 Preamble, must satisfy the practicable test. In order for an "external" alternative to be practicable, it must be reasonably available or obtainable. However, the mere fact of ownership or lack thereof, does not necessarily determine reasonable availability. Some readers were apparently confused by the Preamble to the Proposed Regulation, which referred to the fact the National Environmental Policy Act (NEPA) may require consideration of courses of action beyond the authority of the agency involved. We did not mean to suggest that the Guidelines were necessarily imposing such a requirement on private individuals but, rather, to suggest that what we were requiring was well within the alternatives analyses required by NEPA.

Second, once these practicable alternatives have been identified in this fashion, the permitting authority should consider whether any of them, including land disposal options, are less environmentally harmful than the proposed discharge project. Of course, where there is no significant or easily identifiable difference in impact, the

alternative need not be considered to have "less adverse" impact.

Several commenters questioned the legal basis for requiring the permitting authority to select the least damaging alternative. (The use of the term "select" may have been misleading. Strictly speaking, the permitting authority does not select anything; he denies the permit if the guidelines requirements have not been complied with.) As mentioned above, the statute leaves to EPA's discretion the exact implementation of the alternative requirement in section 403 of the Act. In large part, the approach taken by these regulations is very similar to that taken by the recent section 403(c) regulations (45 FR 65942, October 3, 1980). There is one difference; the Guidelines always prohibit discharges where there is a practicable, less damaging alternative, while the section 403(c) regulations only apply this prohibition in some cases. This difference reflects the wide range of water systems subject to 404 and the extreme sensitivity of many of them to physical destruction. These waters form a priceless mosaic. Thus, if destruction of an area of waters of the United States may reasonably be avoided, it should be avoided. Of course, where a category of 404 discharges is so minimal in its effects that it has been placed under a general permit, there is no need to perform a case-by-case alternatives analysis. This feature corresponds, in a sense, to the category of discharges under section 403 for which no alternatives analysis is required.

Third, some commenters were concerned that the alternative consideration was unduly focused on water quality, and that a better alternative from a water quality standpoint might be less desirable from, say, an air quality point of view. This concern overlooks the explicit provision that the existence of an alternative which is less damaging to the aquatic ecosystem does not disqualify a discharge if that alternative has other significant adverse environmental consequences. This last provision gives the permitting authority an opportunity to take into account evidence of damage to other ecosystems in deciding whether there is a "better" alternative.

Fourth, a number of commenters were concerned that the Guidelines ensure coordination with planning processes under the Coastal Zone Management Act, § 208 of the CWA, and other programs. We agree that where an adequate alternatives analysis has already been developed, it would be wasteful not to incorporate it into the 404 process. New § 230.10(a)(5) makes it clear that where alternatives have been reviewed under another process, the permitting authority shall consider such analysis. However, if the prior analysis is not as complete as the alternatives analysis required under the Guidelines, he must supplement it as needed to determine whether the proposed discharge complies with the Guidelines. Section 230.10(a)(4) recognizes that the range of alternatives considered in NEPA documents will be sufficient for section 404 purposes, where the Corps is the permitting authority. (However, a greater level of detail may be needed in particular cases to be adequate for the 404(b)(1) Guidelines analysis.) This distinction between the Corps and State permitting authorities is based on the fact that it is the Corps' policy, in carrying out its own NEPA responsibilities, to supplement (or require a supplement to) a lead agency's environmental assessment or impact statement where such document does not contain sufficient information. State permitting agencies, on the other hand, are not subject to NEPA in this manner.

We have moved proposed § 230.10(a)(1) (iii), concerning "other particular volumes and concentrations of pollutants at other specific rates", from the list of alternatives in § 230.10 to Subpart H, Minimizing Adverse Effects, because it more properly belongs there.

Definitions (§ 230.3)

A number of the terms defined in § 230.3 are also defined in the Corps' regulations at 33 CFR 323.2, applicable to the Corps' regulatory program. The Corps has recently proposed some revisions to those regulations and expects to receive comments on the definitions. To ensure coordination of these two sets of regulations, we have decided to reserve the definitions of "discharge of dredged material," "discharge of fill material," "dredged material," and "fill material," which otherwise would have appeared at § 230.3 (f), (g), (j), and (l).

Although the term "waters of the United States" also appears in the Corps' regulations, we have retained a definition here, in view of the importance of this key jurisdictional term and the numerous comments received. The definition and the comments are explained below.

Until new definitions are published, directly or by reference to the Corps' revised regulations, users of these Guidelines should refer to the definitions in 33 CFR 323.2 (except in the case of state 404 programs, to which the definitions in 40 CFR § 122.3 apply.)

Waters of the United States: A number of commenters objected to the definition of "waters of the United States" because it was allegedly outside the scope of the Clean Water Act or of the Constitution or because it was not identical to the Corps' definition. We have retained the proposed definition with a few minor changes for clarity for several reasons. First, a number of courts have held that this basic definition of waters of the United States reasonably implements section 502(7) of the Clean Water Act, and that it is constitutional (e.g., *United States* v. *Byrd, 609 F.2d 1204, 7th Cir. 1979; Leslie Salt Company* v. *Froehlke,* 578 F.2d 742, 9th Cir. 1978). Second, we agree that it is preferable to have a uniform definition for waters of the United States, and for all regulations and programs under the CWA. We have decided to use the wording in the recent Consolidated Permit Regulations, 45 Fed. Reg. 33290, May 19, 1980, as the standard.*

Some commenters suggested that the reference in the definition to waters from which fish are taken to be sold in interstate commerce be expanded to include areas where such fish spawn. While we have not made this change because we wish to maintain consistency with the wording of the Consolidated Permit regulations, we do not intend to suggest that a spawning area may not have significance for commerce. The portion of the definition at issue lists major examples, not *all* the ways which commerce may be involved.

Some reviewers questioned the statement in proposed § 230.72(c) (now § 230.11(h)) that activities on fast land created by a discharge of dredged or fill material are considered to be in waters of the United States for purposes of these Guidelines. The proposed language was misleading and we have changed it to more accurately reflect our intent. When a portion of the Waters of the United States has been legally converted to fast land by a discharge of dredged or fill material, it does not remain waters of the United States subject to section 301(a). The discharge may be legal because it was authorized by a permit or because it was made before there was a permit requirement. In the case of an illegal discharge, the fast land may remain subject to the jurisdiction of the Act until the government determines not to seek restoration. However, in authorizing a

* The Consolidated Permit Regulations exclude certain waste treatment systems from waters of the United States. The exact terms of this exclusion are undergoing technical revisions and are expected to change shortly. For this reason, these Guidelines as published do not contain the exclusion as originally worded in the Consolidated Permit Regulations. When published, the corrected exclusion will apply to the Guidelines as well as the Consolidated Permit Regulations.

discharge which will create fast lands, the permitting authority should consider, in addition to the direct effects of the fill inself, the effects on the aquatic environment of any reasonably foreseeable activities to be conducted on that fast land.

Section 230.54 (proposed 230.41) deals with impacts on parks, national and historical monuments, national sea shores, wilderness areas, research sites, and similar preserves. Some readers were concerned that we intended the Guidelines to apply to activities in such preserves whether or not the activities took place in waters of the United States. We intended, and we think the context makes it clear, that the Guidelines apply only to the specification of discharge sites in the waters of the United States, as defined in § 230.3. We have included this section because the fact that a water of the United States may be located in one of these preserves is significant in evaluating the impacts of a discharge into that water.

Wetlands: Many wetlands are waters of the United States under the Clean Water Act. Wetlands are also the subject of Federal Executive Order No. 11990, and various Federal and State laws and regulations. A number of these other programs and laws have developed slightly different wetlands definitions, in part to accommodate or emphasize specialized needs. Some of these definitions include, not only wetlands as these Guidelines define them, but also mud flats and vegetated and unvegetated shallows. Under the Guidelines some of these other areas are grouped with wetlands as "Special Aquatic Sites" (Subpart E) and as such their values are given special recognition. (See discussion of Water Dependency above.) We agree with the comment that the National Inventory of Wetlands prepared by the U.S. Fish and Wildlife Service, while not necessarily exactly coinciding with the scope of waters of the United States under the Clean Water Act or wetlands under these regulations, may help avoid construction in wetlands, and be a useful long-term planning tool.

Various commenters objected to the definition of wetlands in the Guidelines as too broad or too vague. This proposed definition has been upheld by the courts as reasonable and consistent with the Clean Water Act, and is being retained in the final regulation. However, we do agree that vegetative guides and other background material may be helpful in applying the definition in the field. EPA and the Corps are pledged to work on joint research to aid in jurisdictional determinations. As we develop such materials, we will make them available to the public.

Other commenters suggested that we expand the list of examples in the second sentence of the wetland definition. While their suggested additions could legally be added, we have not done so. The list is one of examples only, and does not serve as a limitation on the basic definition. We are reluctant to start expanding the list, since there are many kinds of wetlands which could be included, and the list could become very unwieldy.

In addition, we wish to avoid the confusion which could result from listing as examples, not only areas which generally fit the wetland definitions, but also areas which may or not meet the definition depending on the particular circumstances of a given site. In sum, if an area meets the definition, it is a wetland for purposes of the Clean Water Act, whether or not it falls into one of the listed examples. Of course, more often than not, it will be one of the listed examples.

A few commenters cited alleged inconsistencies between the definition of wetlands in § 230.3 and § 230.42. While we see no inconsistency, we have shortened the latter section as part of our effort to eliminate unnecessary comments.

Unvegetated Shallows: One of the special aquatic areas listed in the proposal was "unvegetated shallows" (§ 230.44). Since special aquatic areas are subject to the presumptions in § 230.10(a)(3), it is important that they be clearly defined so that the permitting authority may readily know when to apply the presumptions. We were unable to develop, at this time, a definition for unvegetated shallows which was both easy to apply and not too inclusive or exclusive. Therefore, we have decided the wiser course is to delete unvegetated shallows from the special aquatic area classification. Of course, as waters of the United States, they are still subject to the rest of the Guidelines.

"Fill Material": We are temporarily reserving § 230.3(1). Both the proposed Guidelines and the proposed Consolidated Permit Regulations defined fill material as material discharged for the primary purpose of replacing an aquatic area with dryland or of changing the bottom elevation of a water body, reserving to the NPDES program discharges with the same effect which are primarily for the purpose of disposing of waste. Both proposals solicited comments on this distinction, referred to as the primary purpose test. On May 19, 1980, acting under a court-imposed deadline, EPA issued final Consolidated Permit Regulations while the 404(b)(1) Guidelines rulemaking was still pending. These Consolidated Permit Regulations contained a new definition of fill material which eliminated the primary purpose test and included as fill material all pollutants which have the effect of fill, that is, which replace part of the waters of the United States with dryland or which change the bottom elevation of a water body for any purpose. This new definition is similar to the one used before 1977.

During the section 404(b)(1) rulemaking, the Corps has raised certain questions about the implementation of such a definition. Because of the importance of making the Final Guidelines available without further delay, and because of our desire to cooperate with the Corps in resolving their concerns about fill material, we have decided to temporarily reserve § 230.3(1) pending further discussion. This action does not affect the effectiveness of the Consolidated Permit Regulations. Consequently, there is a discrepency between those regulations and the Corps' regulations, which still contain the old definition.

Therefore, to avoid any uncertainty from this situation, EPA wishes to make clear its enforcement policy for unpermitted discharges of solid waste. EPA has authority under section 309 of the CWA to issue administrative orders against violations of section 301. Unpermitted discharges of solid waste into waters of the United States violate section 301.

Under the present circumstances, EPA plans to issue solid waste administrative orders with two basic elements. First, the orders will require the violator to apply to the Corps of Engineers for a section 404 permit within a specified period of time. (The Corps has agreed to accept these applications and to hold them until it resolves its position on the definition of fill material.)

Second, the order will constrain further discharges by the violator. In extreme cases, an order may require that discharges cease immediately. However, because we recognize that there will be a lapse of time before decisions are made on this kind of permit application, these orders may expressly allow unpermitted discharges to continue subject to specific conditions set forth by EPA in the order. These conditions will be designed to avoid further environmental damage.

Of course, these orders will not influence the ultimate issuance or non-issuance of a permit or determine the conditions that may be specified in such a permit. Nor will such orders limit the

Administrator's authority under section 309(b) or the right of a citizen to bring suit against a violator under section 505 of the CWA.

Permitting Authority: We have used the new term "permitting authority," instead of "District Engineer," throughout these regulations, in recognition of the fact that under the 1977 amendments approved States may also issue permits.

Coastal Zone Management Plans

Several commenters were concerned about the relationship between section 404 and approved Coastal Zone Management (CZM) plans. Some expressed concern that the Guidelines might authorize a discharge prohibited by a CZM plan; others objected to the fact that the Guidelines might prohibit a discharge which was consistent with a CZM plan.

Under section 307(b) of the CZM Act, no Federal permits may be issued until the applicant furnishes a certification that the discharge is consistent with an approved CZM plan, if there is one, and the State concurs in the certification or waives review. Section 325.2(b)(2) of the Corps' regulation, which applies to all Federal 404 permits, implements this requirement for section 404. Because the Corps' regulations adequately address the CZM consistency requirement, we have not duplicated § 325.2(b)(2) in the Guidelines. Where a State issues State 404 permits, it may of course require consistency with its CZM plan under State law.

The second concern, that the 404 Guidelines might be stricter than a CZM plan, points out a possible problem with CZM plans, not with the Guidelines. Under 307(f) of CZMA, all CZM plans must provide for compliance with applicable requirements of the Clean Water Act. The Guidelines are one such requirement. Of course, to the extent that a CZM plan is general and area-wide, it may be impossible to include in its development the same project-specific consideration of impacts and alternatives required under the Guidelines. Nonetheless, it cannot authorize or mandate a discharge of dredged or fill material which fails to comply with the requirements of these Guidelines. Often CZM plans contain a requirement that all activities conducted under it meet the permit requirements of the Clean Water Act. In such a case, there could of course be no conflict between the CZM plan and the requirements of the Guidelines.

We agree with commenters who urge that delay and duplication of effort be avoided by consolidating alternatives studies required under different statutes, including the Coastal Zone Management Act. However, since some planning processes do not deal with specific projects, their consideration of alternatives may not be sufficient for the Guidelines. Where another alternative analysis is less complete than that contemplated under section 404, it may not be used to weaken the requirements of the Guidelines.

Advanced Identification of Dredged or Fill Material Disposal Sites

A large number of commenters objected to the way proposed § 230.70, new Subpart I, had been changed from the 1975 regulations. A few objected to the section itself. Most of the comments also revealed a misunderstanding about the significance of identifying an area. First, the fact that an area has been identified as unsuitable for a potential discharge site does not mean that someone cannot apply for and obtain a permit to discharge there as long as the Guidelines and other applicable requirements are satisified.* Conversely, the fact that an area has been identified as a potential site does not mean that a permit is unnecessary or that one will automatically be forthcoming. The intent of this section was to aid applicants by giving advance notice that they would have a relatively easy or difficult time qualifying for a permit to use particular areas. Such advance notice should facilitate applicant planning and shorten permit processing time.

Most of the objectors focused on EPA's "abandonment" of its "authority" to identify sites. While that "authority" is perhaps less "authoritative" than the commenters suggested (see above), we agree that there is no reason to decrease EPA's role in the process. Therefore, we have changed new § 230.80(a) to read:

"Consistent with these Guidelines, EPA and the permitting authority on their own initiative or at the request of any other party, and after consultation with any affected State that is not the permitting authority, may identify sites which will be considered as:"

We have also deleted proposed § 230.70(a)(3), because it did not seem to accomplish much. Consideration of the point at which cumulative and secondary impacts become unacceptable and warrant emergency action will generally be more appropriate in a permit-by-permit context. Once that point has been so determined, of course, the area can be identified as "unsuitable" under the new § 230.80(a)(2).

* EPA may foreclose the use of a site by exercising its authority under section 404(c). The advance identification referred to in this section is not a section 404(c) prohibition.

Executive Order 12044

A number of commenters took the position that Executive Order 12044 requires EPA to prepare a "regulatory analysis" in connection with these regulations. EPA disagrees. These regulations are not, strictly speaking, new regulations. They do not impose new standards or requirements, but rather substantially clarify and reorganize the existing interim final regulations

Under EPA's criteria implementing Executive Order 12044, EPA will prepare a Regulatory Analysis for any regulation which imposes *additional* annual costs totalling $100 million or which will result in a total *additional* cost of production of any major product or service which exceeds 5% of its selling price. While many commenters, particularly members of the American Association of Port Authorities (AAPA), requested a regulatory analysis and claimed that the regulations were too burdensome, none of them explained how that burden was an *additional* one attributable to this revision. A close comparison of the new regulation and the explicit and implicit requirements in the interim final Guidelines reveals that there has been very little real change in the criteria by which discharges are to be judged or in the tests that must be conducted; therefore, we stand by our original determination that a regulatory analysis is not required.

Perhaps the most significant area in which the regulations are more explicit and arguably stricter is in the consideration of alternatives. However, even the 1975 regulations required the permitting authority to consider "the availability of alternate sites and methods of disposal that are less damaging to the environment," and to avoid activities which would have significant adverse effects. We do not think that the revised Guidelines' more explicit direction to avoid adverse effects that could be prevented through selection of a clearly less damaging site or method is a change imposing a substantial new burden on the regulated public.

Because the revised regulations are more explicit than the interim final regulations in some respects, it is possible that permit reviewers will do a more thorough job evaluating proposed discharges. This may result in somewhat more carefully drawn permit conditions. However, even if, for purposes of argument, the possible cost of complying with these conditions is considered an *additional* cost, there is no reason to believe that it alone will be anywhere near $100 million annually.

We also believe that it is appropriate to recognize the regulatory benefits from these more carefully drafted final regulations. Because they are much clearer about what should be considered and documented, we expect there will be fewer delays in reviewing permits, and that initial decisions to issue permits are less likely to be appealed to higher authority. These benefits are expected to offset any potential cost increase.

Some commenters suggested that documentation requirements would generate an additional cost of operations. The Corps' procedural regulations at 33 CFR 325.8 and 325.11 already require extensive documentation for individual permits being denied or being referred to higher authority for resolution of a conflict between agencies.

Economic Factors

A number of commenters asked EPA to include consideration of economic factors in the Guidelines. We believe that the regulation already recognizes economic factors to the extent contemplated by the statute. First, the Guidelines explicitly include the concept of "practicability" in connection with both alternatives and steps to minimize impacts. If an alleged alternative is unreasonably expensive to the applicant, the alternative is not "practicable." In addition, the Guidelines also consider economics indirectly in that they are structured to avoid the expense of unnecessary testing through the "reason-to-believe-test." Second, the statute expressly provides that the economics of anchorage and navigation may be considered, but only after application of the section 404(b)(1) Guidelines. (See section 404(b)(2).)

Borrow Sites

A number of highway departments objected because they felt the Guidelines would require them to identify specific borrow sites at the time of application, which would disrupt their normal contracting process and increase cost. These objections were based on a misunderstanding of the Guideline's requirements. Under those Guidelines, the actual borrow sites need not be identified, if the application and the permit specify that the discharge material must come from clean upland sites which are removed from sources of contamination and otherwise satisfy the reason-to-believe test. A condition that the material come from such a site would enable the permitting authority to make his determinations and find compliance with the conditions of § 230.10, without requiring highway departments to specify in advance the specific borrow sites to be used.

Consultation With Fish and Wildlife Agencies

One commenter wanted us to put in a statement that the Fish and Wildlife Coordination Act requires consultation with fish and wildlife agencies. We have not added new language because (1) the Fish and Wildlife Act only applies to Federal permitting agencies and not to State permitting agencies, and (2) the Corps' regulations already provide for such consultation by the only Federal 404 permitting agency. However, we agree with the commenter that Federal and State fish and wildlife agencies may often provide valuable assistance in evaluating the impacts of discharges of dredged or fill material.

The Importance of Appropriate Documentation

Specific documentation is important to ensure an understanding of the basis for each decision to allow, condition, or prohibit a discharge through application of the Guidelines. Documentation of information is required for: (1) facts and data gathered in the evaluation and testing of the extraction site, the material to be discharged, and the disposal site; (2) factual determinations regarding changes that can be expected at the disposal site if the discharge is made as proposed; and (3) findings regarding compliance with § 230.10 conditions. This documentation provides a record of actions taken that can be evaluated for adequacy and accuracy and ensures consideration of all important impacts in the evaluation of a proposed discharge of dredged or fill material.

The specific information documented under (1) and (2) above in any given case depends on the level of investigation necessary to provide for a reasonable understanding of the impact on the aquatic ecosystems. We anticipate that a number of individual and most General permit applications will be for routine, minor activities with little potential for significant adverse environmental impacts. In such cases, the permitting authority will not have to require extensive testing or analysis to make his findings of compliance. The level of documentation should reflect the significance and complexity of the proposed discharge activity.

Factual Determinations

Proposed section 230.20, "Factual Determinations" (now § 230.11) has been significantly reorganized in response to comments. First, we have changed (e) to reflect our elimination of the artificial distinction between the section 307(a)(1) toxics and other contaminants. Second, we have eliminated proposed (f) (Biological Availability), since the necessary information will be provided by (d) and new (e). Proposed (f) was intended to reflect the presumption that toxics were present and biologically available. We have modified proposed (g), now (f), to focus on the size of the disposal site and the size and shape of the mixing zone. The specific requirement to document the site has been deleted; where such information is relevant, it will automatically be considered in making the other determinations. We have also deleted proposed (h) (Special Determinations) since it did not provide any useful information which would not already be considered in making the other factual determinations.

Finally, in response to many comments, we have moved the provisions on cumulative and secondary impact to the Factual Determination section to give them further emphasis. We agree that such impacts are an important consideration in evaluating the acceptability of a discharge site.

Water Quality Standards

One commenter was concerned that the reference § 230.10(b) to water quality standards and criteria "approved or promulgated under section 303" might encourage permit authorities to ignore other water quality requirements. Under section 303, all State water quality standards are to be submitted to EPA for approval. If the submitted standards are incomplete or insufficiently stringent, EPA may promulgate standards to replace or supplant the State standards. Disapproved standards remain in effect until replaced. Therefore, to refer to "EPA approved or promulgated standards" is to ignore those State standards which have been neither approved nor replaced. We have therefore changed the wording of this requirement as follows: "* * * any applicable State water quality standard." We have also dropped the reference to "criteria", to be consistent with the Agency's general position that water quality criteria are not regulatory.

Other Requirements for Discharge

Section 230.10(c) provides that discharges are not permitted if they will have "significantly" adverse effects on various aquatic resources. In this context, "significant" and "significantly" mean more than "trivial", that is, significant in a conceptual rather than a statistical sense. Not all effects which

are statistically significant in the laboratory are significantly adverse in the field.

Section 320.10(d) uses the term "minimize" to indicate that all reasonable reduction in impacts be obtained. As indicated by the "appropriate and practicable" provision, steps which would be unreasonably costly or would be infeasible or which would accomplish only inconsequential reductions in impact need not be taken.

Habitat Development and Restoration of Water Bodies

Habitat development and restoration involve changes in open water and wetlands that minimize adverse effects of proposed changes or that neutralize or reverse the effects of past changes on the ecosystem. Development may produce a new or modified ecological state by displacement of some or all of the existing environmental characteristics. Restoration has the potential to return degraded environments to their former ecological state.

Habitat development and restoration can contribute to the maintenance and enhancement of a viable aquatic ecosystem at the discharge site. From an environmental point of view, a project involving the discharge of dredged and fill material should be designed and managed to emulate a natural ecosystem. Research, demonstration projects, and full scale implementation have been done in many categories of development and restoration. The U.S. Fish and Wildlife Service has programs to develop and restore habitat. The U.S. Army Engineer Waterways Experiment Station has published guidelines for using dredged material to develop wetland habitat, for establishing marsh vegetation, and for building islands that attract colonies of nesting birds. The EPA has a Clean Lakes program which supplies funds to States and localities to enhance or restore degraded lakes. This may involve dredging nutrient-laden sediments from a lake and ensuring that nutrient inflows to the lake are controlled. Restoration and habitat development techniques can be used to minimize adverse impacts and compensate for destroyed habitat. Restoration and habitat development may also provide secondary benefits such as improved opportunities for outdoor recreation and positive use for dredged materials.

The development and restoration of viable habitats in water bodies requires planning and construction practices that integrate the new or improved habitat into the existing environment. Planning requires a model or standard, the achievement of which is attempted by manipulating design and implementation of the activity. This model or standard should be based on characteristics of a natural ecosystem in the vicinity of a proposed activity. Such use of a natural ecosystem ensures that the developed or restored area, once established, will be nourished and maintained physically, chemically and biologically by natural processes. Some examples of natural ecosystems include, but are not limited to, the following: salt marsh, cattail marsh, turtle grass bed, small island, etc.

Habitat development and restoration, by definition, should have environmental enhancement and maintenance as their initial purpose. Human uses may benefit but they are not the primary purpose. Where such projects are not founded on the objectives of maintaining ecosystem function and integrity, some values may be favored at the expense of others. The ecosystem affected must be considered in order to achieve the desired result of development and restoration. In the final analysis, selection of the ecosystem to be emulated is of critical importance and a loss of value can occur if the wrong model or an incomplete model is selected. Of equal importance is the planning and management of habitat development and restoration on a case-by-case basis.

Specific measures to minimize impacts on the aquatic ecosystem by enhancement and restoration projects include but are not limited to:

(1) Selecting the nearest similar natural ecosystem as the model in the implementation of the activity.

Obviously degraded or significantly less productive habitats may be considered prime candidates for habitat restoration. One viable habitat, however, should not be sacrificed in an attempt to create another, i.e., a productive vegetated shallow water area should not be destroyed in an attempt to create a wetland in its place.

(2) Using development and restoration techniques that have been demonstrated to be effective in circumstances similar to those under consideration wherever possible.

(3) Where development and restoration techniques proposed for use have not yet advanced to the pilot demonstration or implementation stage, initiate their use on a small scale to allow corrective action if unanticipated adverse impacts occur.

(4) Where Federal funds are spent to clean up waters of the U.S. through dredging, scientifically defensible levels of pollutant concentration in the return discharge should be agreed upon with the funding authority in addition to any applicable water quality standards in order to maintain the desired improved water quality.

(5) When a significant ecological change in the aquatic environment is proposed by the discharge of dredged or fill material, the permitting authority should consider the ecosystem that will be lost as well as the environmental benefits of the new system.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Part 230 is revised to read as follows:

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OR DISPOSAL SITES FOR DREDGED OF FILL MATERIAL

Subpart A—General

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230.2 Applicability.
230.3 Definitions.
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230.5 General procedures to be followed.
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Subpart B—Compliance With the Guidelines

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Subpart C—Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystem

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Subpart D—Potential Impacts on Biological Characteristics of the Aquatic Ecosystem

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230.51 Recreational and commercial fisheries.
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Sec.

230.54 Parks, national and historic monuments, national seashores, wilderness areas, research sites and similar preserves.

Subpart G—Evaluation and Testing

230.60 General evaluation of dredged or fill material.

230.61 Chemical, biological, and physical evaluation and testing.

Subpart H—Actions to Minimize Adverse Effects

230.70 Actions concerning the location of the discharge.

230.71 Actions concerning the material to be discharged.

230.72 Actions controlling the material after discharge.

230.73 Actions affecting the method of dispersion.

230.74 Actions related to technology.

230.75 Actions affecting plant and animal populations.

230.76 Actions affecting human use.

230.77 Other actions.

Subpart I—Planning To Shorten Permit Processing Time

230.80 Advanced identification of disposal areas.

Authority: This regulation is issued under authority of Sections 404(b) and 501(a) of the Clean Water Act of 1977, 33 U.S.C. § 1344(b) and § 1361(a).

Subpart A—General

§ 23.1 Purpose and policy.

(a) The purpose of these Guidelines is to restore and maintain the chemical, physical, and biological integrity of waters of the United States through the control of discharges of dredged or fill material.

(b) Congress has expressed a number of policies in the Clean Water Act. These Guidelines are intended to be consistent with and to implement those policies.

(c) Fundamental to these Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.

(d) From a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these Guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources.

§ 230.2 Applicability.

(a) These Guidelines have been developed by the Administrator of the Environmental Protection Agency in conjunction with the Secretary of the Army acting through the Chief of Engineers under section 404(b)(1) of the Clean Water Act (33 U.S.C. 1344). The Guidelines are applicable to the specification of disposal sites for discharges of dredged or fill material into waters of the United States. Sites may be specified through:

(1) The regulatory program of the U.S. Army Corps of Engineers under sections 404(a) and (e) of the Act (see 33 CFR 320, 323 and 325);

(2) The civil works program of the U.S. Army Corps of Engineers (see 33 CFR 209.145 and section 150 of Pub. L. 94–587, Water Resources Development Act of 1976);

(3) Permit programs of States approved by the Administrator of the Environmental Protection Agency in accordance with sections 404(g) and (h) of the Act (see 40 CFR 122, 123 and 124);

(4) Statewide dredged or fill material regulatory programs with best management practices approved under section 208(b)(4)(B) and (C) of the Act (see 40 CFR 35.1560);

(5) Federal construction projects which meet criteria specified in section 404(r) of the Act.

(b) These Guidelines will be applied in the review of proposed discharges of dredged or fill material into navigable waters which lie inside the baseline from which the territorial sea is measured, and the discharge of fill material into the territorial sea, pursuant to the procedures referred to in paragraphs (a)(1) and (a)(2) above. The discharge of dredged material into the territorial sea is governed by the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, and regulations and criteria issued pursuant thereto (40 CFR Part 220–228).

(c) Guidance on interpreting and implementing these Guidelines may be prepared jointly by EPA and the Corps at the national or regional level from time to time. No modifications to the basic application, meaning, or intent of these Guidelines will be made without rulemaking by the Administrator under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

§ 230.3 Definitions.

For purposes of this Part, the following terms shall have the meanings indicated:

(a) The term "Act" means the Clean Water Act (also known as the Federal Water Pollution Control Act or FWPCA) Pub. L. 92–500, as amended by Pub. L. 95–217, 33 U.S.C. 1251, *et seq.*

(b) The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and the like are "adjacent wetlands."

(c) The terms "aquatic environment" and "aquatic ecosystem" mean waters of the United States, including wetlands, that serve as habitat for interrelated and interacting communities and populations of plants and animals.

(d) The term "carrier of contaminant" means dredged or fill material that contains contaminants.

(e) The term "contaminant" means a chemical or biological substance in a form that can be incorporated into, onto or be ingested by and that harms aquatic organisms, consumers of aquatic organisms, or users of the aquatic environment, and includes but is not limited to the substances on the 307(a)(1) list of toxic pollutants promulgated on January 31, 1978 (43 FR 4109).

(f) [Reserved]

(g) [Reserved]

(h) The term "discharge point" means the point within the disposal site at which the dredged or fill material is released.

(i) The term "disposal site" means that portion of the "waters of the United States" where specific disposal activities are permitted and consist of a bottom surface area and any overlying volume of water. In the case of wetlands on which surface water is not present, the disposal site consists of the wetland surface area.

(j) [Reserved]

(k) The term "extraction site" means the place from which the dredged or fill material proposed for discharge is to be removed.

(l) [Reserved]

(m) The term "mixing zone" means a limited volume of water serving as a zone of initial dilution in the immediate vicinity of a discharge point where receiving water quality may not meet quality standards or other requirements otherwise applicable to the receiving water. The mixing zone should be considered as a place where wastes and water mix and not as a place where effluents are treated.

(n) The term "permitting authority" means the District Engineer of the U.S. Army Corps of Engineers or such other individual as may be designated by the Secretary of the Army to issue or deny permits under section 404 of the Act; or the State Director of a permit program

approved by EPA under § 404(g) and § 404(h) or his delegated representative.

(o) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials not covered by the Atomic Energy Act, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The legislative history of the Act reflects that "radioactive materials" as included within the definition of "pollutant" in section 502 of the Act means only radioactive materials which are not encompassed in the definition of source, byproduct, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated under the Atomic Energy Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term "pollutant", are radium and accelerator produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).

(p) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of an aquatic ecosystem.

(q) The term "practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(q-1) "Special aquatic sites" means those sites identified in Subpart E. They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. (See 230.10(a)(3))

(r) The term "territorial sea" means the belt of the sea measured from the baseline as determined in accordance with the Conventon on the Territorial Sea and the Contiguous Zone and extending seaward a distance of three miles.

(s) The term "waters of the united States" means:

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under this definition.

(5) Tributaries of waters identified in paragraphs (1)–(4) of this section;

(6) The territorial sea;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1)–(6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR § 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

(t) The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

§ 230.4 Organization.

The Guidelines are divided into eight subparts. Subpart A presents those provisions of general applicability, such as purpose and definitions. Subpart B establishes the four conditions which must be satisfied in order to make a finding that a proposed discharge of dredged or fill material complies with the Guidelines. Section 230.11 of Subpart B, sets forth factual determinations which are to be considered in determining whether or not a proposed discharge satisfies the Subpart B conditions of compliance. Subpart C describes the physical and chemical components of a site and provides guidance as to how proposed discharges of dredged or fill material may affect these components. Subparts D–F detail the special characteristics of particular aquatic ecosystems in terms of their values, and the possible loss of these values due to discharges of dredged or fill material. Subpart G prescribes a number of physical, chemical, and biological evaluations and testing procedures to be used in reaching the required factual determinations. Subpart H details the means to prevent or mimimize adverse effects. Subpart I concerns advanced identification of disposal areas.

§ 230.5 General procedures to be followed.

In evaluating whether a particular discharge site may be specified, the permitting authority should use these Guidelines in the following sequence:

(a) In order to obtain an overview of the principal regulatory provisions of the Guidelines, review the restrictions on discharge in § 230.10(a)–(d), the measures to mimimize adverse impact of Subpart H, and the required factual determinations of § 230.11.

(b) Determine if a General permit (§ 230.7) is applicable; if so, the applicant needs merely to comply with its terms, and no further action by the permitting authority is necessary. Special conditions for evaluation of proposed General permits are contained in § 230.7. If the discharge is not covered by a General permit:

(c) Examine practicable alternatives to the proposed discharge, that is, not discharging into the waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences (§ 230.10(a)).

(d) Delineate the candidate disposal site consistent with the criteria and evaluations of § 230.11(f).

(e) Evaluate the various physical and chemical components which characterize the non-living environment of the candidate site, the substrate and the water including its dynamic characteristics (Subpart C).

(f) Identify and evaluate any special or critical characteristics of the candidate disposal site, and surrounding areas which might be affected by use of such site, related to their living communities or human uses (Subparts D, E, and F).

(g) Review Factual Determinations in § 230.11 to determine whether the information in the project file is sufficient to provide the documentation required by § 230.11 or to perform the pre-testing evaluation described in § 230.60, or other information is necessary.

(h) Evaluate the material to be discharged to determine the possibility of chemical contamination or physical incompatibility of the material to be discharged (§ 230.60).

(i) If there is a reasonable probability of chemical contamination, conduct the appropriate tests according to the section on Evaluation and Testing (§ 230.61).

(j) Identify appropriate and practicable changes to the project plan to minimize the environmental impact of the discharge, based upon the specialized methods of minimization of impacts in Subpart H.

(k) Make and document Factual Determinations in § 230.11.

(l) Make and document Findings of Compliance (§ 230.12) by comparing Factual Determinations with the requirements for discharge of § 230.10.

This outline of the steps to follow in using the Guidelines is simplified for purposes of illustration. The actual process followed may be iterative, with the results of one step leading to a reexamination of previous steps. The permitting authority must address all of the relevant provisions of the Guidelines in reaching a Finding of Compliance in an individual case.

§ 230.6 Adaptability.

(a) The manner in which these Guidelines are used depends on the physical, biological, and chemical nature of the proposed extraction site, the material to be discharged, and the candidate disposal site, including any other important components of the ecosystem being evaluated. Documentation to demonstrate knowledge about the extraction site, materials to be extracted, and the candidate disposal site is an essential component of guideline application. These Guidelines allow evaluation and documentation for a variety of activities, ranging from those with large, complex impacts on the aquatic environment to those for which the impact is likely to be innocuous. It is unlikely that the Guidelines will apply in their entirety to any one activity, no matter how complex. It is anticipated that substantial numbers of permit applications will be for minor, routine activities that have little, if any, potential for significant degradation of the aquatic environment. It generally is not intended or expected that extensive testing, evaluation or analysis will be needed to make findings of compliance in such routine cases. Where the conditions for General permits are met, and where numerous applications for similar activities are likely, the use of General permits will eliminate repetitive evaluation and documentation for individual discharges.

(b) The Guidelines user, including the agency or agencies responsible for implementing the Guidelines, must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation. The level of documentation should reflect the significance and complexity of the discharge activity.

(c) An essential part of the evaluation process involves making determinations as to the relevance of any portion(s) of the Guidelines and conducting further evaluation only as needed. However, where portions of the Guidelines review procedure are "short form" evaluations, there still must be sufficient information (including consideration of both individual and cumulative impacts) to support the decision of whether to specify the site for disposal of dredged or fill material and to support the decision to curtail or abbreviate the evaluation process. The presumption against the discharge in § 230.1 applies to this decision-making.

(d) In the case of activities covered by General permits or 208(b)(4)(B) and (C) Best Management Practices, the analysis and documentation required by the Guidelines will be performed at the time of General permit issuance or 208(b)(4)(B) and (C) Best Management Practices promulgation and will not be repeated when activities are conducted under a General permit or 208(b)(4)(B) and (C) Best Management Practices control. These Guidelines do not require reporting or formal written communication at the time individual activities are initiated under a General permit or 208(b)(4)(B) and (C) Best Management Practices. However, a particular General permit may require appropriate reporting.

§ 230.7 General permits.

(a) *Conditions for the issuance of General permits.* A General permit for a category of activities involving the discharge of dredged or fill material complies with the Guidelines if it meets the applicable restrictions on the discharge in § 230.10 and if the permitting authority determines that:

(1) The activities in such category are similar in nature and similar in their impact upon water quality and the aquatic environment;

(2) The activities in such category will have only minimal adverse effects when performed separately; and

(3) The activities in such category will have only minimal cumulative adverse effects on water quality and the aquatic environment.

(b) *Evaluation process.* To reach the determinations required in paragraph (a) of this section, the permitting authority shall set forth in writing an evaluation of the potential individual and cumulative impacts of the category of activities to be regulated under the General permit. While some of the information necessary for this evaluation can be obtained from potential permittees and others through the proposal of General permits for public review, the evaluation must be completed before any General permit is issued, and the results must be published with the final permit.

(1) This evaluation shall be based upon consideration of the prohibitions listed in § 230.10(b) and the factors listed in § 230.10(c), and shall include documented information supporting each factual determination in § 230.11 of the Guidelines (consideration of alternatives in § 230.10(a) are not directly applicable to General permits);

(2) The evaluation shall include a precise description of the activities to be permitted under the General permit, explaining why they are sufficiently similar in nature and in environmental impact to warrant regulation under a single General permit based on Subparts C–F of the Guidelines. Allowable differences between activities which will be regulated under the same General permit shall be specified. Activities otherwise similar in nature may differ in environmental impact due to their location in or near ecologically sensitive areas, areas with unique chemical or physical characteristics, areas containing concentrations of toxic substances, or areas regulated for specific human uses or by specific land or water management plans (e.g., areas regulated under an approved Coastal Zone Management Plan). If there are specific geographic areas within the purview of a proposed General permit (called a draft General permit under a State 404 program), which are more appropriately regulated by individual permit due to the considerations cited in this paragraph, they shall be clearly delineated in the evaluation and excluded from the permit. In addition, the permitting authority may require an individual permit for any proposed activity under a General permit where the nature or location of the activity makes an individual permit more appropriate.

(3) To predict cumulative effects, the evaluation shall include the number of individual discharge activities likely to be regulated under a General permit until its expiration, including repetitions of individual discharge activities at a single location.

Subpart B—Compliance With the Guidelines

§ 230.10 Restrictions on discharge.

Note.—Because other laws may apply to particular discharges and because the Corps of Engineers or State 404 agency may have additional procedural and substantive requirements, a discharge complying with the requirement of these Guidelines will not automatically receive a permit.

Although all requirements in § 230.10 must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities.

(a) Except as provided under § 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

(1) For the purpose of this requirement, practicable alternatives include, but are not limited to:

(i) Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters;

(ii) Discharges of dredged or fill material at other locations in waters of the United States or ocean waters;

(2) An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.

(3) Where the activity associated with a discharge which is proposed for a special aquatic site (as defined in Subpart E) does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not "water dependent"), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demostrated otherwise.

(4) For actions subject to NEPA, where the Corps of Engineers is the permitting agency, the analysis of alternatives required for NEPA environmental documents, including supplemental Corps NEPA documents, will in most cases provide the information for the evaluation of alternatives under these Guidelines. On occasion, these NEPA documents may address a broader range of alternatives than required to be considered under this paragraph or may not have considered the alternatives in sufficient detail to respond to the requirements of these Guidelines. In the latter case, it may be necessary to supplement these NEPA documents with this additional information.

(5) To the extent that practicable alternatives have been identified and evaluated under a Coastal Zone Management program, a § 208 program, or other planning process, such evaluation shall be considered by the permitting authority as part of the consideration of alternatives under the Guidelines. Where such evaluation is less complete than that contemplated under this subsection, it must be supplemented accordingly.

(b) No discharge of dredged or fill material shall be permitted if it:

(1) Causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard;

(2) Violates any applicable toxic effluent standard or prohibition under section 307 of the Act;

(3) Jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended. If an exemption has been granted by the Endangered Species Committee, the terms of such exemption shall apply in lieu of this subparagraph;

(4) Violates any requirement imposed by the Secretary of Commerce to protect any marine sanctuary designated under Title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

(c) Except as provided under § 404(b)(2), no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. Findings of significant degradation related to the proposed discharge shall be based upon appropriate factual determinations, evaluations, and tests required by Subparts B and G, after consideration of Subparts C–F, with special emphasis on the persistence and permanence of the effects outlined in those subparts. Under these Guidelines, effects contributing to significant degradation considered individually or collectively, include:

(1) Significantly adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites.

(2) Significantly adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical, and chemical processes;

(3) Significantly adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or

(4) Significantly adverse effects of discharge of pollutants on recreational, aesthetic, and economic values.

(d) Except as provided under § 404(b)(2), no discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. Subpart H identifies such possible steps.

§ 230.11 Factual determinations.

The permitting authority shall determine in writing the potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological components of the aquatic environment in light of Subparts C–F. Such factual determinations shall be used in § 230.12 in making findings of compliance or non-compliance with the restrictions on discharge in § 230.10. The evaluation and testing procedures described in § 230.60 and § 230.61 of Subpart G shall be used as necessary to make, and shall be described in, such determination. The determinations of effects of each proposed discharge shall include the following:

(a) *Physical substrate determinations.* Determine the nature and degree of effect that the proposed discharge will have, individually and cumulatively, on the characteristics of the substrate at the proposed disposal site. Consideration shall be given to the similarity in particle size, shape, and degree of compaction of the material

proposed for discharge and the material constituting the substrate at the disposal site, and any potential changes in substrate elevation and bottom contours, including changes outside of the disposal site which may occur as a result of erosion, slumpage, or other movement of the discharged material. The duration and physical extent of substrate changes shall also be considered. The possible loss of environmental values (§ 230.20) and actions to minimize impact (Subpart H) shall also be considered in making these determinations. Potential changes in substrate elevation and bottom contours shall be predicted on the basis of the proposed method, volume, location, and rate of discharge, as well as on the individual and combined effects of current patterns, water circulation, wind and wave action, and other physical factors that may affect the movement of the discharged material.

(b) *Water circulation, fluctuation, and salinity determinations.* Determine the nature and degree of effect that the proposed discharge will have individually and cumulatively on water, current patterns, circulation including downstream flows, and normal water fluctuation. Consideration shall be given to water chemistry, salinity, clarity, color, odor, taste, dissolved gas levels, temperature, nutrients, and eutrophication plus other appropriate characteristics. Consideration shall also be given to the potential diversion or obstruction of flow, alterations of bottom contours, or other significant changes in the hydrologic regime. Additional consideration of the possible loss of environmental values (§ 230.23–.25) and actions to minimize impacts (Subpart H), shall be used in making these determinations. Potential significant effects on the current patterns, water circulation, normal water fluctuation and salinity shall be evaluated on the basis of the proposed method, volume, location, and rate of discharge.

(c) *Suspended particulate/turbidity determinations.* Determine the nature and degree of effect that the proposed discharge will have, individually and cumulatively, in terms of potential changes in the kinds and concentrations of suspended particulate/turbidity in the vicinity of the disposal site. Consideration shall be given to the grain size of the material proposed for discharge, the shape and size of the plume of suspended particulates, the duration of the discharge and resulting plume and whether or not the potential changes will cause violations of applicable water quality standards. Consideration should also be given to the possible loss of environmental values (§ 230.21) and to actions for minimizing impacts (Subpart H). Consideration shall include the proposed method, volume, location, and rate of discharge, as well as the individual and combined effects of current patterns, water circulation and fluctuations, wind and wave action, and other physical factors on the movement of suspended particulates.

(d) *Contaminant determinations.* Determine the degree to which the material proposed for discharge will introduce, relocate, or increase contaminants. This determination shall consider the material to be discharged, the aquatic environment at the proposed disposal site, and the availability of contaminants.

(e) *Aquatic ecosystem and organism determinations.* Determine the nature and degree of effect that the proposed discharge will have, both individually and cumulatively, on the structure and function of the aquatic ecosystem and organisms. Consideration shall be given to the effect at the proposed disposal site of potential changes in substrate characteristics and elevation, water or substrate chemistry, nutrients, currents, circulation, fluctuation, and salinity, on the recolonization and existence of indigenous aquatic organisms or communities. Possible loss of environmental values (§ 230.31), and actions to minimize impacts (Subpart H) shall be examined. Tests as described in § 230.61 (Evaluation and Testing), may be required to provide information on the effect of the discharge material on communities or populations of organisms expected to be exposed to it.

(f) *Proposed disposal site determinations.* (1) Each disposal site shall be specified through the application of these Guidelines. The mixing zone shall be confined to the smallest practicable zone within each specified disposal site that is consistent with the type of dispersion determined to be appropriate by the application of these Guidelines. In a few special cases under unique environmental conditions, where there is adequate justification to show that widespread dispersion by natural means will result in no significantly adverse environmental effects, the discharged material may be intended to be spread naturally in a very thin layer over a large area of the substrate rather than be contained within the disposal site.

(2) The permitting authority and the Regional Administrator shall consider the following factors in determining the acceptability of a proposed mixing zone:

(i) Depth of water at the disposal site;

(ii) Current velocity, direction, and variability at the disposal site;

(iii) Degree of turbulence;

(iv) Stratification attributable to causes such as obstructions, salinity or density profiles at the disposal site;

(v) Discharge vessel speed and direction, if appropriate;

(vi) Rate of discharge;

(vii) Ambient concentration of constituents of interest;

(viii) Dredged material characteristics, particularly concentrations of constituents, amount of material, type of material (sand, silt, clay, etc.) and settling velocities;

(ix) Number of discharge actions per unit of time;

(x) Other factors of the disposal site that affect the rates and patterns of mixing.

(g) *Determination of cumulative effects on the aquatic ecosystem.* (1) Cumulative impacts are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material. Although the impact of a particular discharge may constitute a minor change in itself, the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems.

(2) Cumulative effects attributable to the discharge of dredged or fill material in waters of the United States should be predicted to the extent reasonable and practical. The permitting authority shall collect information and solicit information from other sources about the cumulative impacts on the aquatic ecosystem. This information shall be documented and considered during the decision-making process concerning the evaluation of individual permit applications, the issuance of a General permit, and monitoring and enforcement of existing permits.

(h) *Determination of secondary effects on the aquatic ecosystem.* (1) Secondary effects are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material. Information about secondary effects on aquatic ecosystems shall be considered prior to the time final section 404 action is taken by permitting authorities.

(2) Some examples of secondary effects on an aquatic ecosystem are fluctuating water levels in an impoundment and downstream associated with the operation of a dam, septic tank leaching and surface runoff

from residential or commercial developments on fill, and leachate and runoff from a sanitary landfill located in waters of the U.S. Activities to be conducted on fast land created by the discharge of dredged or fill material in waters of the United States may have secondary impacts within those waters which should be considered in evaluating the impact of creating those fast lands.

§ 230.12 Findings of compliance or non-compliance with the restrictions on discharge.

(a) On the basis of these Guidelines (Subparts C through G) the proposed disposal sites for the discharge of dredged or fill material must be:

(1) Specified as complying with the requirements of these Guidelines; or

(2) Specified as complying with the requirements of these Guidelines with the inclusion of appropriate and practicable discharge conditions (see Subpart H) to minimize pollution or adverse effects to the affected aquatic ecosystems; or

(3) Specified as failing to comply with the requirements of these Guidelines where:

(i) There is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as such alternative does not have other significant adverse environmental consequences; or

(ii) The proposed discharge will result in significant degradation of the aquatic ecosystem under § 230.10(b) or (c); or

(iii) The proposed discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem; or

(iv) There does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines.

(b) Findings under this section shall be set forth in writing by the permitting authority for each proposed discharge and made available to the permit applicant. These findings shall include the factual determinations required by § 230.11, and a brief explanation of any adaptation of these Guidelines to the activity under consideration. In the case of a General permit, such findings shall be prepared at the time of issuance of that permit rather than for each subsequent discharge under the authority of that permit.

Subpart C—Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystem

Note.—The effects described in this subpart should be considered in making the factual determinations and the findings of compliance or non-compliance in Subpart B.

§ 230.20 Substrate.

(a) The substrate of the aquatic ecosystem underlies open waters of the United States and constitutes the surface of wetlands. It consists of organic and inorganic solid materials and includes water and other liquids or gases that fill the spaces between solid particles.

(b) Possible loss of environmental characteristics and values: The discharge of dredged or fill material can result in varying degrees of change in the complex physical, chemical, and biological characteristics of the substrate. Discharges which alter substrate elevation or contours can result in changes in water circulation, depth, current pattern, water fluctuation and water temperature. Discharges may adversely affect bottom-dwelling organisms at the site by smothering immobile forms or forcing mobile forms to migrate. Benthic forms present prior to a discharge are unlikely to recolonize on the discharged material if it is very dissimilar from that of the discharge site. Erosion, slumping, or lateral displacement of surrounding bottom of such deposits can adversely affect areas of the substrate outside the perimeters of the disposal site by changing or destroying habitat. The bulk and composition of the discharged material and the location, method, and timing of discharges may all influence the degree of impact on the substrate.

§ 230.21 Suspended particulates/turbidity.

(a) Suspended particulates in the aquatic ecosystem consist of fine-grained mineral particles, usually smaller than silt, and organic particles. Suspended particulates may enter water bodies as a result of land runoff, flooding, vegetative and planktonic breakdown, resuspension of bottom sediments, and man's activities including dredging and filling. Particulates may remain suspended in the water column for variable periods of time as a result of such factors as agitation of the water mass, particulate specific gravity, particle shape, and physical and chemical properties of particle surfaces.

(b) Possible loss of environmental characteristics and values: The discharge of dredged or fill material can result in greatly elevated levels of suspended particulates in the water column for varying lengths of time. These new levels may reduce light penetration and lower the rate of photosynthesis and the primary productivity of an aquatic area if they last long enough. Sight-dependent species may suffer reduced feeding ability leading to limited growth and lowered resistance to disease if high levels of suspended particulates persist. The biological and the chemical content of the suspended material may react with the dissolved oxygen in the water, which can result in oxygen depletion. Toxic metals and organics, pathogens, and viruses absorbed or adsorbed to fine-grained particulates in the material may become biologically available to organisms either in the water column or on the substrate. Significant increases in suspended particulate levels create turbid plumes which are highly visible and aesthetically displeasing. The extent and persistence of these adverse impacts caused by discharges depend upon the relative increase in suspended particulates above the amount occurring naturally, the duration of the higher levels, the current patterns, water level, and fluctuations present when such discharges occur, the volume, rate, and duration of the discharge, particulate deposition, and the seasonal timing of the discharge.

§ 230.22 Water.

(a) Water is the part of the aquatic ecosystem in which organic and inorganic constituents are dissolved and suspended. It constitutes part of the liquid phase and is contained by the substrate. Water forms part of a dynamic aquatic life-supporting system. Water clarity, nutrients and chemical content, physical and biological content, dissolved gas levels, pH, and temperature contribute to its life-sustaining capabilities.

(b) Possible loss of environmental characteristics and values: The discharge of dredged or fill material can change the chemistry and the physical characteristics of the receiving water at a disposal site through the introduction of chemical constituents in suspended or dissolved form. Changes in the clarity, color, odor, and taste of water and the addition of contaminants can reduce or eliminate the suitability of water bodies for populations of aquatic organisms, and for human consumption, recreation, and aesthetics. The introduction of nutrients or organic material to the water column as a result of the discharge can lead to a high biochemical oxygen demand (BOD), which in turn can lead to reduced dissolved oxygen, thereby potentially affecting the survival of many aquatic organisms. Increases in nutrients can favor one group of organisms such as algae to the detriment of other more desirable types such as submerged aquatic vegetation, potentially causing adverse health

effects, objectionable tastes and odors, and other problems.

§ 230.23 Current patterns and water circulation.

(a) Current patterns and water circulation are the physical movements of water in the aquatic ecosystem. Currents and circulation respond to natural forces as modified by basin shape and cover, physical and chemical characteristics of water strata and masses, and energy dissipating factors.

(b) Possible loss of environmental characteristics and values: The discharge of dredged or fill material can modify current patterns and water circulation by obstructing flow, changing the direction or velocity of water flow, changing the direction or velocity of water flow and circulation, or otherwise changing the dimensions of a water body. As a result, adverse changes can occur in: location, structure, and dynamics of aquatic communities; shoreline and substrate erosion and depositon rates; the deposition of suspended particulates; the rate and extent of mixing of dissolved and suspended components of the water body; and water stratification.

§ 230.24 Normal water fluctuations.

(a) Normal water fluctuations in a natural aquatic system consist of daily, seasonal, and annual tidal and flood fluctuations in water level. Biological and physical components of such a system are either attuned to or characterized by these periodic water fluctuations.

(b) Possible loss of environmental characteristics and values: The discharge of dredged or fill material can alter the normal water-level fluctuation pattern of an area, resulting in prolonged periods of inundation, exaggerated extremes of high and low water, or a static, nonfluctuating water level. Such water level modifications may change salinity patterns, alter erosion or sedimentation rates, aggravate water temperature extremes, and upset the nutrient and dissolved oxygen balance of the aquatic ecosystem. In addition, these modifications can alter or destroy communities and populations of aquatic animals and vegetation, induce populations of nuisance organisms, modify habitat, reduce food supplies, restrict movement of aquatic fauna, destroy spawning areas, and change adjacent, upstream, and downstream areas.

§ 230.25 Salinity gradients.

(a) Salinity gradients form where salt water from the ocean meets and mixes with fresh water from land.

(b) Possible loss of environmental characteristics and values: Obstructions which divert or restrict flow of either fresh or salt water may change existing salinity gradients. For example, partial blocking of the entrance to an estuary or river mouth that significantly restricts the movement of the salt water into and out of that area can effectively lower the volume of salt water available for mixing within that estuary. The downstream migration of the salinity gradient can occur, displacing the maximum sedimentation zone and requiring salinity-dependent aquatic biota to adjust to the new conditions, move to new locations if possible, or perish. In the freshwater zone, discharge operations in the upstream regions can have equally adverse impacts. A significant reduction in the volume of fresh water moving into an estuary below that which is considered normal can affect the location and type of mixing thereby changing the characteristic salinity patterns. The resulting changed circulation pattern can cause the upstream migration of the salinity gradient displacing the maximim sedimentation zone. This migration may affect those organisms that are adapted to freshwater environments. It may also affect municipal water supplies.

Note.—Possible actions to minimize adverse impacts regarding site characteristics can be found in Subpart H.

Subpart D—Potential Impacts on Biological Characteristics of the Aquatic Ecosystem

Note.—The impacts described in this subpart should be considered in making the factual determinations and the findings of compliance or non-compliance in Subpart B.

§ 230.30 Threatened and endangered species.

(a) An endangered species is a plant or animal in danger of extinction throughout all or a significant portion of its range. A threatened species is one in danger of becoming an endangered species in the foreseeable future throughout all or a significant portion of its range. Listings of threatened and endangered species as well as critical habitats are maintained by some individual States and by the U.S. Fish and Wildlife Service of the Department of the Interior (codified annually at 50 CFR § 17.11). The Department of Commerce has authority over some threatened and endangered marine mammals, fish and reptiles.

(b) Possible loss of values: The major potential impacts on threatened or endangered species from the discharge of dredged or fill material include:

(1) Covering or otherwise directly killing species;

(2) The impairment or destruction of habitat to which these species are limited. Elements of the aquatic habitat which are particularly crucial to the continued survival of some threatened or endangered species include adequate good quality water, spawning and maturation areas, nesting areas, protective cover, adequate and reliable food supply, and resting areas for migratory species. Each of these elements can be adversely affected by changes in either the normal water conditions for clarity, chemical content, nutrient balance, dissolved oxygen, pH, temperature, salinity, current patterns, circulation and fluctuation, or the physical removal of habitat; and

(3) Facilitating incompatible activities.

(c) Where consultation with the Secretary of the Interior occurs under Section 7 of the Endangered Species Act, the conclusions of the Secretary concerning the impact(s) of the discharge on threatened and endangered species and their habitat shall be considered final.

§ 230.31 Fish, crustaceans, mollusks and other aquatic organisms in the food web.

(a) Aquatic organisms in the food web include, but are not limited to, finfish, crustaceans, mollusks, insects, annelids, planktonic organisms, and the plants and animals on which they feed and depend upon for their needs. All forms and life stages of an organism, throughout its geographic range, are included in this category.

(b) Possible loss of values: The discharge of dredged or fill material can variously affect populations of fish, crustaceans, mollusks and other food web organisms through the release of contaminants which adversely affect adults, juveniles, larvae, or eggs, or result in the establishment or proliferation of an undesirable competitive species of plant or animal at the expense of the desired resident species. Suspended particulates settling on attached or buried eggs can smother the eggs by limiting or sealing off their exposure to oxygenated water. Discharge of dredged and fill material may result in the debilitation or death of sedentary organisms by smothering, exposure to chemical contaminants in dissolved or suspended form, exposure to high levels of suspended particulates, reduction in food supply, or alteration of the substrate upon which they are dependent. Mollusks are particularly

sensitive to the discharge of material during periods of reproduction and growth and development due primarily to their limited mobility. They can be rendered unfit for human consumption by tainting, by production and accumulation of toxins, or by ingestion and retention of pathogenic organisms, viruses, heavy metals or persistent synthetic organic chemicals. The discharge of dredged or fill material can redirect, delay, or stop the reproductive and feeding movements of some species of fish and crustacea, thus preventing their aggregation in accustomed places such as spawning or nursery grounds and potentially leading to reduced populations. Reduction of detrital feeding species or other representatives of lower trophic levels can impair the flow of energy from primary consumers to higher trophic levels. The reduction or potential elimination of food chain organism populations decreases the overall productivity and nutrient export capability of the ecosystem.

§ 230.32 Other wildlife.

(a) Wildlife associated with aquatic ecosystems are resident and transient mammals, birds, reptiles, and amphibians.

(b) Possible loss of values: The discharge of dredged or fill material can result in the loss or change of breeding and nesting areas, escape cover, travel corridors, and preferred food sources for resident and transient wildlife species associated with the aquatic ecosystem. These adverse impacts upon wildlife habitat may result from changes in water levels, water flow and circulation, salinity, chemical content, and substrate characteristics and elevation. Increased water turbidity can adversely affect wildlife species which rely upon sight to feed, and disrupt the respiration and feeding of certain aquatic wildlife and food chain organisms. The availability of contaminants from the discharge of dredged or fill material may lead to the bioaccumulation of such contaminants in wildlife. Changes in such physical and chemical factors of the environment may favor the introduction of undesirable plant and animal species at the expense of resident species and communities. In some aquatic environments lowering plant and animal species diversity may disrupt the normal functions of the ecosystem and lead to reductions in overall biological productivity.

Note.—Possible actions to minimize adverse impacts regarding characteristics of biological components of the aquatic ecosystem can be found in Subpart H.

Subpart E—Potential Impacts on Special Aquatic Sites

Note.—The impacts described in this subpart should be considered in making the factual determinations and the findings of compliance or non-compliance in Subpart B. The definition of special aquatic sites is found in § 230.3(q-1).

§ 230.40 Sanctuaries and refuges.

(a) Sanctuaries and refuges consist of areas designated under State and Federal laws or local ordinances to be managed principally for the preservation and use of fish and wildlife resources.

(b) Possible loss of values: Sanctuaries and refuges may be affected by discharges of dredged or fill material which will:

(1) Disrupt the breeding, spawning, migratory movements or other critical life requirements of resident or transient fish and wildlife resources;

(2) Create unplanned, easy and incompatible human access to remote aquatic areas;

(3) Create the need for frequent maintenance activity;

(4) Result in the establishment of undesirable competitive species of plants and animals;

(5) Change the balance of water and land areas needed to provide cover, food, and other fish and wildlife habitat requirements in a way that modifies sanctuary or refuge management practices;

(6) Result in any of the other adverse impacts discussed in Subparts C and D as they relate to a particular sanctuary or refuge.

§ 230.41 Wetlands.

(a)(1) Wetlands consist of areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(2) Where wetlands are adjacent to open water, they generally constitute the transition to upland. The margin between wetland and open water can best be established by specialists familiar with the local environment, particularly where emergent vegetation merges with submerged vegetation over a broad area in such places as the lateral margins of open water, headwaters, rainwater catch basins, and groundwater seeps. The landward margin of wetlands also can best be identified by specialists familiar with the local environment when vegetation from the two regions merges over a broad area.

(3) Wetland vegetation consists of plants that require saturated soils to survive (obligate wetland plants) as well as plants, including certain trees, that gain a competitive advantage over others because they can tolerate prolonged wet soil conditions and their competitors cannot. In addition to plant populations and communities, wetlands are delimited by hydrological and physical characteristics of the environment. These characteristics should be considered when information about them is needed to supplement information available about vegetation, or where wetland vegetation has been removed or is dormant.

(b) Possible loss of values: The discharge of dredged or fill material in wetlands is likely to damage or destroy habitat and adversely affect the biological productivity of wetlands ecosystems by smothering, by dewatering, by permanently flooding, or by altering substrate elevation or periodicity of water movement. The addition of dredged or fill material may destroy wetland vegetation or result in advancement of succession to dry land species. It may reduce or eliminate nutrient exchange by a reduction of the system's productivity, or by altering current patterns and velocities. Disruption or elimination of the wetland system can degrade water quality by obstructing circulation patterns that flush large expanses of wetland systems, by interfering with the filtration function of wetlands, or by changing the aquifer recharge capability of a wetland. Discharges can also change the wetland habitat value for fish and wildlife as discussed in Subpart D. When disruptions in flow and circulation patterns occur, apparently minor loss of wetland acreage may result in major losses through secondary impacts. Discharging fill material in wetlands as part of municipal, industrial or recreational development may modify the capacity of wetlands to retain and store floodwaters and to serve as a buffer zone shielding upland areas from wave actions, storm damage and erosion.

§ 230.42 Mud flats

(a) Mud flats are broad flat areas along the sea coast and in coastal rivers to the head of tidal influence and in inland lakes, ponds, and riverine systems. When mud flats are inundated, wind and wave action may resuspend bottom sediments. Coastal mud flats are exposed at extremely low tides and inundated at high tides with the water table at or near the surface of the substrate. The substrate of mud flats contains organic material and particles

smaller in size than sand. They are either unvegetated or vegetated only by algal mats.

(b) Possible loss of values: The discharge of dredged or fill material can cause changes in water circulation patterns which may permanently flood or dewater the mud flat or disrupt periodic inundation, resulting in an increase in the rate of erosion or accretion. Such changes can deplete or eliminate mud flat biota, foraging areas, and nursery areas. Changes in inundation patterns can affect the chemical and biological exchange and decomposition process occurring on the mud flat and change the deposition of suspended material affecting the productivity of the area. Changes may reduce the mud flat's capacity to dissipate storm surge runoff.

§ 230.43 Vegetated shallows.

(a) Vegetated shallows are permanently inundated areas that under normal circumstances support communities of rooted aquatic vegetation, such as turtle grass and eelgrass in estuarine or marine systems as well as a number of freshwater species in rivers and lakes.

(b) Possible loss of values: The discharge of dredged or fill material can smother vegetation and benthic organisms. It may also create unsuitable conditions for their continued vigor by: (1) changing water circulation patterns; (2) releasing nutrients that increase undesirable algal populations; (3) releasing chemicals that adversely affect plants and animals; (4) increasing turbidity levels, thereby reducing light penetration and hence photosynthesis; and (5) changing the capacity of a vegetated shallow to stabilize bottom materials and decrease channel shoaling. The discharge of dredged or fill material may reduce the value of vegetated shallows as nesting, spawning, nursery, cover, and forage areas, as well as their value in protecting shorelines from erosion and wave actions. It may also encourage the growth of nuisance vegetation.

§ 230.44 Coral reefs.

(a) Coral reefs consist of the skeletal deposit, usually of calcareous or silicaceous materials, produced by the vital activities of anthozoan polyps or other invertebrate organisms present in growing portions of the reef.

(b) Possible loss of values: The discharge of dredged or fill material can adversely affect colonies of reef building organisms by burying them, by releasing contaminants such as hydrocarbons into the water column, by reducing light penetration through the water, and by increasing the level of suspended particulates. Coral organisms are extremely sensitive to even slight reductions in light penetration or increases in suspended particulates. These adverse effects will cause a loss of productive colonies which in turn provide habitat for many species of highly specialized aquatic organisms.

§ 230.45 Riffle and pool complexes.

(a) Steep gradient sections of streams are sometimes characterized by riffle and pool complexes. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate. Riffle and pool complexes are particularly valuable habitat for fish and wildlife.

(b) Possible loss of values: Discharge of dredged or fill material can eliminate riffle and pool areas by displacement, hydrologic modification, or sedimentation. Activities which affect riffle and pool areas and especially riffle/pool ratios, may reduce the aeration and filtration capabilities at the discharge site and downstream, may reduce stream habitat diversity, and may retard repopulation of the disposal site and downstream waters through sedimentation and the creation of unsuitable habitat. The discharge of dredged or fill material which alters stream hydrology may cause scouring or sedimentation of riffles and pools. Sedimentation induced through hydrological modification or as a direct result of the deposition of unconsolidated dredged or fill material may clog riffle and pool areas, destroy habitats, and create anaerobic conditions. Eliminating pools and meanders by the discharge of dredged or fill material can reduce water holding capacity of streams and cause rapid runoff from a watershed. Rapid runoff can deliver large quantities of flood water in a short time to downstream areas resulting in the destruction of natural habitat, high property loss, and the need for further hydraulic modification.

Note.—Possible actions to minimize adverse impacts on site or material characteristics can be found in Subpart H.

Subpart F—Potential Effects on Human Use Characteristics

Note.—The effects described in this subpart should be considered in making the factual determinations and the findings of compliance or non-compliance in Subpart B.

§ 230.50 Municipal and private water supplies.

(a) Municipal and private water supplies consist of surface water or ground water which is directed to the intake of a municipal or private water supply system.

(b) Possible loss of values: Discharges can affect the quality of water supplies with respect to color, taste, odor, chemical content and suspended particulate concentration, in such a way as to reduce the fitness of the water for consumption. Water can be rendered unpalatable or unhealthy by the addition of suspended particulates, viruses and pathogenic organisms, and dissolved materials. The expense of removing such substances before the water is delivered for consumption can be high. Discharges may also affect the quantity of water available for municipal and private water supplies. In addition, certain commonly used water treatment chemicals have the potential for combining with some suspended or dissolved substances from dredged or fill material to form other products that can have a toxic effect on consumers.

§ 230.51 Recreational and commercial fisheries.

(a) Recreational and commercial fisheries consist of harvestable fish, crustaceans, shellfish, and other aquatic organisms used by man.

(b) Possible loss of values: The discharge of dredged or fill materials can affect the suitability of recreational and commercial fishing grounds as habitat for populations of consumable aquatic organisms. Discharges can result in the chemical contamination of recreational or commercial fisheries. They may also interfere with the reproductive success of recreational and commercially important aquatic species through disruption of migration and spawning areas. The introduction of pollutants at critical times in their life cycle may directly reduce populations of commercially important aquatic organisms or indirectly reduce them by reducing organisms upon which they depend for food. Any of these impacts can be of short duration or prolonged, depending upon the physical and chemical impacts of the discharge and the biological availability of contaminants to aquatic organisms.

§ 230.52 Water-related recreation.

(a) Water-related recreation encompasses activities undertaken for amusement and relaxation. Activities encompass two broad categories of use: consumptive, e.g., harvesting resources by hunting and fishing; and non-comsumptive, e.g. canoeing and sight-seeing.

(b) Possible loss of values: One of the more important direct impacts of dredged or fill disposal is to impair or destroy the resources which support recreation activities. The disposal of dredged or fill material may adversely modify or destroy water use for recreation by changing turbidity, suspended particulates, temperature, dissolved oxygen, dissolved materials, toxic materials, pathogenic organisms, quality of habitat, and the aesthetic qualities of sight, taste, odor, and color.

§ 230.53 Aesthetics.

(a) Aesthetics associated with the aquatic ecosystem consist of the perception of beauty by one or a combination of the senses of sight, hearing, touch, and smell. Aesthetics of aquatic ecosystems apply to the quality of life enjoyed by the general public and property owners.

(b) Possible loss of values: The discharge of dredged or fill material can mar the beauty of natural aquatic ecosystems by degrading water quality, creating distracting disposal sites, inducing inappropriate development, encouraging unplanned and incompatible human access, and by destroying vital elements that contribute to the compositional harmony or unity, visual distinctiveness, or diversity of an area. The discharge of dredged or fill material can adversely affect the particular features, traits, or characteristics of an aquatic area which make it valuable to property owners. Activities which degrade water quality, disrupt natural substrate and vegetational characteristics, deny access to or visibility of the resource, or result in changes in odor, air quality, or noise levels may reduce the value of an aquatic area to private property owners.

§ 230.54 Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves.

(a) These preserves consist of areas designated under Federal and State laws or local ordinances to be managed for their aesthetic, educational, historical, recreational, or scientific value.

(b) Possible loss of values: The discharge of dredged or fill material into such areas may modify the aesthetic, educational, historical, recreational and/or scientific qualities thereby reducing or eliminating the uses for which such sites are set aside and managed.

Note.—Possible actions to minimize adverse impacts regarding site or material characteristics can be found in Subpart H.

Subpart G—Evaluation and Testing

§ 230.60 General evaluation of dredged or fill material.

The purpose of these evaluation procedures and the chemical and biological testing sequence outlined in § 230.61 is to provide information to reach the determinations required by § 230.11. Where the results of prior evaluations, chemical and biological tests, scientific research, and experience can provide information helpful in making a determination, these should be used. Such prior results may make new testing unnecessary. The information used shall be documented. Where the same information applies to more than one determination, it may be documented once and referenced in later determinations.

(a) If the evaluation under paragraph (b) indicates the dredged or fill material is not a carrier of contaminants, then the required determinations pertaining to the presence and effects of contaminants can be made without testing. Dredged or fill material is most likely to be free from chemical, biological, or other pollutants where it is composed primarily of sand, gravel, or other naturally occurring inert material. Dredged material so composed is generally found in areas of high current or wave energy such as streams with large bed loads or coastal areas with shifting bars and channels. However, when such material is discolored or contains other indications that contaminants may be present, further inquiry should be made.

(b) The extraction site shall be examined in order to assess whether it is sufficiently removed from sources of pollution to provide reasonable assurance that the proposed discharge material is not a carrier of contaminants. Factors to be considered include but are not limited to:

(1) Potential routes of contaminants or contaminated sediments to the extraction site, based on hydrographic or other maps, aerial photography, or other materials that show watercourses, surface relief, proximity to tidal movement, private and public roads, location of buildings, municipal and industrial areas, and agricultural or forest lands.

(2) Pertinent results from tests previously carried out on the material at the extraction site, or carried out on similar material for other permitted projects in the vicinity. Materials shall be considered similar if the sources of contamination, the physical configuration of the sites and the sediment composition of the materials are comparable, in light of water circulation and stratification, sediment accumulation and general sediment characteristics. Tests from other sites may be relied on only if no changes have occurred at the extraction sites to render the results irrelevant.

(3) Any potential for significant introduction of persistent pesticides from land runoff or percolation;

(4) Any records of spills or disposal of petroleum products or substances designated as hazardous under section 311 of the Clean Water Act (See 40 CFR 116);

(5) Information in Federal, State and local records indicating significant introduction of pollutants from industries, municipalities, or other sources, including types and amounts of waste materials discharged along the potential routes of contaminants to the extraction site; and

(6) Any possibility of the presence of substantial natural deposits of minerals or other substances which could be released to the aquatic environment in harmful quantities by man-induced discharge activities.

(c) To reach the determinations in § 230.11 involving potential effects of the discharge on the characteristics of the disposal site, the narrative guidance in Subparts C–F shall be used along with the general evaluation procedure in § 230.60 and, if necessary, the chemical and biological testing sequence in § 230.61. Where the discharge site is adjacent to the extraction site and subject to the same sources of contaminants, and materials at the two sites are substantially similar, the fact that the material to be discharged may be a carrier of contaminants is not likely to result in degradation of the disposal site. In such circumstances, when dissolved material and suspended particulates can be controlled to prevent carrying pollutants to less contaminated areas, testing will not be required.

(d) Even if the § 230.60(b) evaluation (previous tests, the presence of polluting industries and information about their discharge or runoff into waters of the U.S., bioinventories, etc.) leads to the conclusion that there is a high probability that the material proposed for discharge is a carrier of contaminants, testing may not be necessary if constraints are available to

reduce contamination to acceptable levels within the disposal site and to prevent contaminants from being transported beyond the boundaries of the disposal site, if such constraints are acceptable to the permitting authority and the Regional Administrator, and if the potential discharger is willing and able to implement such constraints. However, even if tests are not performed, the permitting authority must still determine the probable impact of the operation on the receiving aquatic ecosystem. Any decision not to test must be explained in the determinations made under § 230.11.

§ 230.61 Chemical, biological, and physical evaluation and testing.

Note.—The Agency is today proposing revised testing guidelines. The evaluation and testing procedures in this section are based on the 1975 § 404(b)(1) interim final Guidelines and shall remain in effect until the revised testing guidelines are published as final regulations.

(a) No single test or approach can be applied in all cases to evaluate the effects of proposed discharges of dredged or fill materials. This section provides some guidance in determining which test and/or evaluation procedures are appropriate in a given case. Interim guidance to applicants concerning the applicability of specific approaches or procedures will be furnished by the permitting authority.

(b) *Chemical-biological interactive effects.* The principal concerns of discharge of dredged or fill material that contain contaminants are the potential effects on the water column and on communities of aquatic organisms.

(1) *Evaluation of chemical-biological interactive effects.* Dredged or fill material may be excluded from the evaluation procedures specified in paragraphs (b)(2) and (3) of this section if it is determined, on the basis of the evaluation in § 230.60, that the likelihood of contamination by contaminants is acceptably low, unless the permitting authority, after evaluating and considering any comments received from the Regional Administrator, determines that these procedures are necessary. The Regional Administrator may require, on a case-by-case basis, testing approaches and procedures by stating what additional information is needed through further analyses and how the results of the analyses will be of value in evaluating potential environmental effects.

If the General Evaluation indicates the presence of a sufficiently large number of chemicals to render impractical the identification of all contaminants by chemical testing, information may be obtained from bioassays in lieu of chemical tests.

(2) *Water column effects.* (i) Sediments normally contain constituents that exist in various chemical forms and in various concentrations in several locations within the sediment. An elutriate test may be used to predict the effect on water quality due to release of contaminants from the sediment to the water column. However, in the case of fill material originating on land which may be a carrier of contaminants, a water leachate test is appropriate.

(ii) Major constituents to be analyzed in the elutriate are those deemed critical by the permitting authority, after evaluating and considering any comments received from the Regional Administrator, and considering results of the evaluation in § 230.60. Elutriate concentrations should be compared to concentrations of the same constituents in water from the disposal site. Results should be evaluated in light of the volume and rate of the intended discharge, the type of discharge, the hydrodynamic regime at the disposal site, and other information relevant to the impact on water quality. The permitting authority should consider the mixing zone in evaluating water column effects. The permitting authority may specify bioassays when such procedures will be of value.

(3) *Effects on benthos.* The permitting authority may use an appropriate benthic bioassay (including bioaccumulation tests) when such procedures will be of value in assessing ecological effects and in establishing discharge conditions.

(c) Procedure for comparison of sites.

(1) When an inventory of the total concentration of contaminants would be of value in comparing sediment at the dredging site with sediment at the disposal site, the permitting authority may require a sediment chemical analysis. Markedly different concentrations of contaminants between the excavation and disposal sites may aid in making an environmental assessment of the proposed disposal operation. Such differences should be interpreted in terms of the potential for harm as supported by any pertinent scientific literature.

(2) When an analysis of biological community structure will be of value to assess the potential for adverse environmental impact at the proposed disposal site, a comparison of the biological characteristics between the excavation and disposal sites may be required by the permitting authority. Biological indicator species may be useful in evaluating the existing degree of stress at both sites. Sensitive species representing community components colonizing various substrate types within the sites should be identified as possible bioassay organisms if tests for toxicity are required. Community structure studies should be performed only when they will be of value in determining discharge conditions. This is particularly applicable to large quantities of dredged material known to contain adverse quantities of toxic materials. Community studies should include benthic organisms such as microbiota and harvestable shellfish and finfish. Abundance, diversity, and distribution should be documented and correlated with substrate type and other appropriate physical and chemical environmental characteristics.

(d) Physical tests and evaluation. The effect of a discharge of dredged or fill material on physical substrate characteristics at the disposal site, as well as on the water circulation, fluctuation, salinity, and suspended particulates content there, is important in making factual determinations in § 230.11. Where information on such effects is not otherwise available to make these factual determinations, the permitting authority shall require appropriate physical tests and evaluations as are justified and deemed necessary. Such tests may include sieve tests, settleability tests, compaction tests, mixing zone and suspended particulate plume determinations, and site assessments of water flow, circulation, and salinity characteristics.

Subpart H—Actions To Minimize Adverse Effects

Note.—There are many actions which can be undertaken in response to § 203.10(d) to minimize the adverse effects of discharges of dredged or fill material. Some of these, grouped by type of activity, are listed in this subpart.

§ 230.70 Actions concerning the location of the discharge.

The effects of the discharge can be minimized by the choice of the disposal site. Some of the ways to accomplish this are by:

(a) Locating and confining the discharge to minimize smothering of organisms;

(b) Designing the discharge to avoid a disruption of periodic water inundation patterns;

(c) Selecting a disposal site that has been used previously for dredged material discharge;

(d) Selecting a disposal site at which the substrate is composed of material similar to that being discharged, such as discharging sand on sand or mud on mud;

(e) Selecting the disposal site, the discharge point, and the method of discharge to minimize the extent of any plume;

(f) Designing the discharge of dredged or fill material to minimize or prevent the creation of standing bodies of water in areas of normally fluctuating water levels, and minimize or prevent the drainage of areas subject to such fluctuations.

§ 230.71 Actions concerning the material to be discharged.

The effects of a discharge can be minimized by treatment of, or limitations on the material itself, such as:

(a) Disposal of dredged material in such a manner that physiochemical conditions are maintained and the potency and availability of pollutants are reduced.

(b) Limiting the solid, liquid, and gaseous components of material to be discharged at a particular site;

(c) Adding treatment substances to the discharge material;

(d) Utilizing chemical flocculants to enhance the deposition of suspended particulates in diked disposal areas.

§ 230.72 Actions controlling the material after discharge.

The effects of the dredged or fill material after discharge may be controlled by:

(a) Selecting discharge methods and disposal sites where the potential for erosion, slumping or leaching of materials into the surrounding aquatic ecosystem will be reduced. These sites or methods include, but are not limited to:

(1) Using containment levees, sediment basins, and cover crops to reduce erosion;

(2) Using lined containment areas to reduce leaching where leaching of chemical constituents from the discharged material is expected to be a problem;

(b) Capping in-place contaminated material with clean material or selectively discharging the most contaminated material first to be capped with the remaining material;

(c) Maintaining and containing discharged material properly to prevent point and nonpoint sources of pollution;

(d) Timing the discharge to minimize impact, for instance during periods of unusual high water flows, wind, wave, and tidal actions.

§ 230.73 Actions affecting the method of dispersion.

The effects of a discharge can be minimized by the manner in which it is dispersed, such as:

(a) Where environmentally desirable, distributing the dredged material widely in a thin layer at the disposal site to maintain natural substrate contours and elevation;

(b) Orienting a dredged or fill material mound to minimize undesirable obstruction to the water current or circulation pattern, and utilizing natural bottom contours to minimize the size of the mound;

(c) Using silt screens or other appropriate methods to confine suspended particulate/turbidity to a small area where settling or removal can occur;

(d) Making use of currents and circulation patterns to mix, disperse and dilute the discharge;

(e) Minimizing water column turbidity by using a submerged diffuser system. A similar effect can be accomplished by submerging pipeline discharges or otherwise releasing materials near the bottom;

(f) Selecting sites or managing discharges to confine and minimize the release of suspended particulates to give decreased turbidity levels and to maintain light penetration for organisms;

(g) Setting limitations on the amount of material to be discharged per unit of time or volume of receiving water.

§ 230.74 Actions related to technology.

Discharge technology should be adapted to the needs of each site. In determining whether the discharge operation sufficiently minimizes adverse environmental impacts, the applicant should consider:

(a) Using appropriate equipment or machinery, including protective devices, and the use of such equipment or machinery in activities related to the discharge of dredged or fill material;

(b) Employing appropriate maintenance and operation on equipment or machinery, including adequate training, staffing, and working procedures;

(c) Using machinery and techniques that are especially designed to reduce damage to wetlands. This may include machines equipped with devices that scatter rather than mound excavated materials, machines with specially designed wheels or tracks, and the use of mats under heavy machines to reduce wetland surface compaction and rutting;

(d) Designing access roads and channel spanning structures using culverts, open channels, and diversions that will pass both low and high water flows, accommodate fluctuating water levels, and maintain circulation and faunal movement;

(e) Employing appropriate machinery and methods of transport of the material for discharge.

§ 230.75 Actions affecting plant and animal populations.

Minimization of adverse effects on populations of plants and animals can be achieved by:

(a) Avoiding changes in water current and circulation patterns which would interfere with the movement of animals;

(b) Selecting sites or managing discharges to prevent or avoid creating habitat conducive to the development of undesirable predators or species which have a competitive edge ecologically over indigenous plants or animals;

(c) Avoiding sites having unique habitat or other value, including habitat of threatened or endangered species;

(d) Using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher ecological value by displacement of some or all of the existing environmental characteristics. Habitat development and restoration techniques can be used to minimize adverse impacts and to compensate for destroyed habitat. Use techniques that have been demonstrated to be effective in circumstances similar to those under consideration wherever possible. Where proposed development and restoration techniques have not yet advanced to the pilot demonstration stage, initiate their use on a small scale to allow corrective action if unanticipated adverse impacts occur.

(e) Timing discharge to avoid spawning or migration seasons and other biologically critical time periods;

(f) Avoiding the destruction of remnant natural sites within areas already affected by development.

§ 230.76 Actions affecting human use.

Minimization of adverse effects on human use potential may be achieved by:

(a) Selecting discharge sites and following discharge procedures to prevent or minimize any potential damage to the aesthetically pleasing features of the aquatic site (e.g. viewscapes), particularly with respect to water quality;

(b) Selecting disposal sites which are not valuable as natural aquatic areas;

(c) Timing the discharge to avoid the seasons or periods when human recreational activity associated with the aquatic site is most important;

(d) Following discharge procedures which avoid or minimize the disturbance of aesthetic features of an aquatic site or ecosystem.

(e) Selecting sites that will not be detrimental or increase incompatible human activity, or require the need for frequent dredge or fill maintenance activity in remote fish and wildlife areas;

(f) Locating the disposal site outside of the vicinity of a public water supply intake.

§ 230.77 Other actions.

(a) In the case of fills, controlling runoff and other discharges from activities to be conducted on the fill;

(b) In the case of dams, designing water releases to accommodate the needs of fish and wildlife.

(c) In dredging projects funded by Federal agencies other than the Corps of Engineers, maintain desired water quality of the return discharge through agreement with the Federal funding authority on scientifically defensible pollutant concentration levels in addition to any applicable water quality standards.

(d) When a significant ecological change in the aquatic environment is proposed by the discharge of dredged or fill material, the permitting authority should consider the ecosystem that will be lost as well as the environmental benefits of the new system.

Subpart I—Planning To Shorten Permit Processing Time

§ 230.80 Advanced identification of disposal areas.

(a) Consistent with these Guidelines, EPA and the permitting authority, on their own initiative or at the request of any other party and after consultation with any affected State that is not the permitting authority, may identify sites which will be considered as:

(1) Possible future disposal sites, including existing disposal sites and non-sensitive areas; or

(2) Areas generally unsuitable for disposal site specification;

(b) The identification of any area as a possible future disposal site should not be deemed to constitute a permit for the discharge of dredged or fill material within such area or a specification of a disposal site. The identification of areas that generally will not be available for disposal site specification should not be deemed as prohibiting applications for permits to discharge dredged or fill material in such areas. Either type of identification constitutes information to facilitate individual or General permit application and processing.

(c) An appropriate public notice of the proposed identification of such areas shall be issued;

(d) To provide the basis for advanced identification of disposal areas, and areas unsuitable for disposal, EPA and the permitting authority shall consider the likelihood that use of the area in question for dredged or fill material disposal will comply with these Guidelines. To facilitate this analysis, EPA and the permitting authority should review available water resources management data including data available from the public, other Federal and State agencies, and information from approved Coastal Zone Management programs and River Basin Plans.

(e) The permitting authority should maintain a public record of the identified areas and a written statement of the basis for identification.

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Part V

Environmental Protection Agency

Testing Requirements for the Specification of Disposal Sites for Dredged or Fill Material

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 230

[WH-FRL 1647-6]

Testing Requirements for the Specification of Disposal Sites for Dredged or Fill Material

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the testing requirements in the section 404(b)(1) Guidelines for the Specification of Disposal Sites for Dredged and Fill Material under section 404 of the Clean Water Act.

The testing requirements in the Guidelines are being revised because on September 18, 1979, when the Guidelines were proposed, EPA and the Corps of Engineers had not completed revisions on the testing portion and sought comments on the remainder of the Guidelines only at that time.

The revised testing section is intended to reconcile the need for simplicity and ease of application of the testing procedures on the one hand with the need for sufficient information to identify potential adverse effects on the environment on the other hand.

DATE: All comments received on or before February 6, 1981, will be considered.

ADDRESSES: Send written comments to: Joseph Krivak, Criteria and Standards Division, Office of Water and Waste Management, (WH-585), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Each person submitting a comment should include his or her name and address and give reasons for any recommendations. A copy of all public comments will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Joseph Krivak, 202-755-0100.

SUPPLEMENTARY INFORMATION:

Background

The section 404 program was established by the Federal Water Pollution Control Act of 1972 (FWPCA) to regulate the discharge of dredged or fill material into waters of the United States. The Secretary of the Army, acting through the Chief of Engineers, and States with programs which have been approved by EPA are authorized to issue permits specifying sites for the discharge of dredged or fill material. Sites are to be specified through the application of guidelines developed by EPA in conjunction with the Secretary (the 404(b)(1) Guidelines).

EPA published Interim Final 404(b)(1) Guidelines on September 5, 1975, which, *inter alia*, provided for certain testing procedures to provide information to be used in the permit decision. Since then, both the passage of the 1977 Amendments to the FWPCA and the experience of EPA and the Corps of Engineers in applying the Guidelines prompted EPA to develop proposed revisions to the Guidelines, which were published in the **Federal Register** on September 18, 1979. Because EPA and the Corps had not at that time completed revisions to the testing portions of the Guidelines, but did not want to delay revisions to the rest of the Guidelines, the September 18, 1979 proposal retained the 1975 testing provisions (with certain non-substantive editing changes) and sought comments on the remainder of the Guidelines only. A final rule reflecting public comments but retaining the old testing provisions (now appearing in §§ 230.60 and 230.61) is being published elsewhere in today's **Federal Register.**

EPA and the Corps have now completed a proposed testing package. After the comment period, we will consider the comments and make appropriate changes in the testing provisions. Then final testing provisions will replace §§ 230.60 and 230.61 as they appear in today's final section 404(b)(1) Guidelines. We are not planning any other changes in the Guidelines apart from those necessary to accommodate the new testing package. While we believe that it will not be necessary to change the regulations substantively to accommodate the new testing procedures, we solicit comments on this point.

The Corps of Engineers has played a major role in developing today's proposed rule. This draft was revised to reflect the comments of Corps and EPA employees with experience sith the permitting process and with the technical and scientific issues involved.

Purpose and Content of the Revised Testing Section

Under the 404(b)(1) Guidelines, a discharge may not take place if the permitting authority finds, among other things, that the discharge will have unacceptable adverse effects or that practical steps have not been taken to minimize adverse impacts (§ 230.10). In order to determine whether these requirements have been met in a particular case, the permitting authority must consider the factors set out in the Guidelines, in light of the particular facts involved. The testing procedures are designed to provide some of the information to be used in making determinations concerning the potential impacts of a particular proposed discharge. Where the circumstances indicate that testing is not likely to provide useful information, the regulation allows the permit decision to be made without testing. We have attempted in this way to reconcile our desire for simplicity and ease of application of the testing procedures on the one hand with the need for sufficient information to identify potential adverse effects on the other hand.

Section-by-Section Summary*

Proposed § 230.60 explains the purpose of testing and sets out general information pertaining to testing. It is our intent to minimize the testing burden, consistent with the need for the permitting authority to make an informed judgment about the potential impacts of a discharge. Thus, this section provides that results of previous tests may be used in appropriate circumstances.

In addition, under § 230.61, tests to evaluate the impacts of contaminants are required only when there is reason to believe that contaminants are present. We have proposed that the trigger be the presence of such contaminants "above background levels." Section 230.61(a) identifies factors which should be considered in this "reason to believe" test (or "initial evaluation," as it is sometimes called). Comments are sought on the adequacy of this list of factors.

Section 230.62 sets out specific testing requirements. These requirements are organized by "category" of discharge. In order to determine which requirements apply to particular discharges, we have constructed categories of discharges, based on the initial evaluation, to reflect different potentials for adverse impacts on the aquatic ecosystem. Comments are sought on the appropriateness of the proposed categories for this purpose. The specific tests required for particular categories are based on the severity of potential impacts.

When there is no reason to believe that dredged material is contaminated, it falls into Category 1, and no contaminant-related testing is required. Category 2 includes dredged material which, while possibly contaminated, probably is not significantly more contaminated than the discharge site.

*The definitions in § 230.3 of the final Guidelines apply to these testing revisions.

Tests are specified to verify that the material is not more contaminated, and, if it is, to provide information to be used in assessing its potential for harm. Comments are solicited on the appropriateness of the proposed tests for this purpose.

Category 3 includes discharges of apparently contaminated dredged material which is to be discharged into contained or confined disposal areas. In this situation, testing is concerned only with the return flow. Where the contained site is itself located in waters of the United States, discharges within it will automatically destroy or dislocate the life there, whether or not the discharged material is contaminated. Thus, there is no need to test the contamination of the material which will remain in the site. The tests for Category 3 are designed to compare the runoff with the receiving water, and, if significant differences are discovered, to assess the potential for harm. Again, comments are sought on the appropriateness of the proposed tests.

Category 4 includes dredged material which, on the basis of the precategorization evaluation, appears to be more contaminated than the discharge site (e.g., not to fall into Category 2) and which will not be confined or contained (e.g., is not in Category 3), and hence presents a potential for environmental harm. Biological tests are prescribed to provide information on the likelihood and extent of harm. Comments are solicited on the appropriateness of the prescribed tests to provide the information needed to evaluate the potential adverse impacts of such discharges.

Under § 230.63, Categories 5 and 6 apply to fill material. If the material is not believed to be contaminated (or the contaminants will not leach out), no testing is required. If there is potential for environmental contamination, the prescribed tests are conducted. When dredged material is used for fill, it should be placed in Categories 1 through 4, not 5 or 6. Comments are solicited on the appropriateness of the categories for fill and the adequacy of the tests for Category 6 for all contaminated, non-dredged fill material, particularly in light of the definition of fill material in the Guidelines published today (40 CFR 230 [FRL 1647–7]) and in the Consolidated Permit Regulations (40 CFR 122.3, 45 FR 33421, May 19, 1980).

Section 230.64 provides a procedure for calculating a mixing zone from the information obtained from testing in § 230.62. Section 230.64 is concerned with the calculation of the mixing zone, not on the evaluation of its acceptability. Where the calculated mixing zone violates a water quality standard (either because the standard prohibits mixing zones or because the calculated mixing zone is outside that allowed under the standard), the discharge will fail to satisfy the requirements of § 230.10(b)(1). Even where the mixing zone meets water quality standards, it may nonetheless contribute to the impact on the environment, and should be weighed with all the other available information in making the determination of significant degradation under § 230.10(c).

Where there are numerical water quality standards for the contaminant involved, the edge of the mixing zone is based on the place where the discharged material is sufficiently diluted to meet ambient water quality standards. Where no numerical water quality exists, the mixing zone perimeter will be calculated based on the results of the water column bioassay. Comments are solicited on the propriety of these two methods for calculating the mixing zone perimeter.

The proposal also calls for bioassay tests where the contaminant levels in the elutriate exceed those of the receiving waters and contaminant levels in the receiving water already exceed applicable standards or criteria, making dilution to those standards impossible. Comments are solicited on whether such tests are necessary or whether such circumstances alone clearly establish the likelihood of significant degradation.

Other points

It is our present intention to have these revised testing provisions go into effect 90 days after their publication as a final rule (probably by the summer of 1981). While the required tests are quite similar to those required under the 1975 regulation, and while we have endeavored to keep to a minimum the occasions when tests will be conducted, we are interested in any comments on the appropriateness of this date.

Under the revised section 404(b)(1) Guidelines, the permitting authority may choose to conduct the tests itself, instead of requiring the applicant to do so. We anticipate this happening when several similar discharges are proposed for a single area, for example. Commenters should bear this in mind in commenting on the potential burden of testing.

Comments objecting to the particular tests specified or suggesting new tests will be more helpful to us if they include reference to (or copies of) pertinent literature.

The Environmental Protection Agency has determined that this document does not constitute a major regulation requiring preparation of an economic impact statement under Executive Order 12044.

The Waterways Experiment Station of the Corps of Engineers has prepared a background document in support of this proposed rule, based on input from both our agencies. Copies are availabe for review in EPA Headquarters Library (Public Information Reference Unit), Room 2404, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

40 CFR Part 230 is proposed to be amended by revising Subpart G to read as follows:

(1) The authority citation for Part 230 reads as follows:

Authority: Secs. 404, 501 of the Clean Water Act of 1977, 33 U.S.C. 1344(b), 1361(a)).

(2) Subpart G is revised to read as follows:

Subpart G—Evaluation and Testing

Sec.

230.60 Purpose of testing and general approach.
230.61 Initial evaluation of dredged or fill material.
230.62 Detailed evaluation, including possible testing of dredged material.
230.63 Detailed evaluation, including possible testing of fill material.
230.64 Mixing zone determinations.

Authority: Secs. 404, 501 of the Clean Water Act of 1977 (33 U.S.C. 1344(b), 1361(a).

Subpart G—Evaluation and Testing

§ 230.60 Purpose of testing and general approach.

(a) *Purpose.* The purpose of the testing procedures in this Subpart is to provide the permitting authority with technical information required to assess the potential chemical and biological effects of the discharge of dredged or fill material into waters of the United States. The permitting authority must interpret this technical information in light of the specific characteristics of the proposed discharge under evaluation. The technical information and interpretation should be used in making the factual determinations in § 230.11.

(1) Because the testing procedures in this Subpart are done primarily in the laboratory, rather than in the field, and because the tests are only generally predictive of what may actually take place at the discharge site, test results shall not be considered as a sole determinant in making the required Findings of Compliance in § 230.12. Therefore, all test results, including

those that describe sediments with a high potential for significant degradation on aquatic organisms, must be related to other pertinent factors in factual determinations (§ 230.11) before Findings of Compliance are made.

(2) Subpart G addresses only those tests designed to determine the chemical and biological degradation caused by contaminants (specific pollutants designated by the authority of Sections 307(a) and 311 of the Clean Water Act (CWA) and other potentially toxic or hazardous pollutants, referred to in § 230.3(g)), which are believed to be in dredged or fill material. To assess the potential effects of the discharge in the factual determinations, it may be necessary to conduct other analyses (e.g., coliform, BOD, COD, etc.) or to consider physical effects such as burial, turbidity, etc., as discussed in Subpart B.

(3) Where the results of prior evaluations, chemical and biological tests, and scientific research can provide information helpful in reaching a determination, those should be used. Such prior results may make new testing unnecessary. The information used to reach each determination shall be documented, except that where the same information is applicable to more than one determination, it may be documented in one instance and referenced in later determinations.

(b) *General approach.* Chemical and biological testing requirements of this section are designed to provide information for the factual determinations and ecological evaluations and to assist in determining the compatibility of the proposed discharge of dredged or fill material with applicable water quality standards. Except for " other analyses" as stated in § 230.60(a)(2), the permitting authority will require tests only in those cases where there is reason to believe that contaminants are present in forms and amounts that are likely to degrade the aquatic environment, including potential availability to organisms in toxic amounts. This "reason to believe" determination will be made by the permitting authority in the initial evaluation process of § 230.61. Categories have been established to provide the permitting authority with guidance on when testing is needed and what tests can be considered sufficient for the application of the Guidelines.

(1) Permitting authorities and/or U.S. EPA Regional administrators may approve modifications of these procedures or require additional tests to obtain needed information for the determination for a specific situation. The reasons for such modifications shall be fully explained and documented in the Section 404(b)(1) evaluation.

(2) The persistence, stability, and solubility in water and/or other solvents of contaminants as well as the duration and rates of introduction of contaminants and rates of dilution and dispersion after introduction are important considerations in selecting appropriate chemical and biological tests and interpreting the test results.

(3) Tests in this section may be performed on several alternative discharge sites concurrently, if this will aid in obtaining necessary information for making the factual determinations for contaminants.

(4) A technical implementation manual containing acceptable and recommended procedures for implementing the testing requirements of this subpart will be developed and approved jointly by the Administrator, EPA, and the Chief of Engineers. The manual will be reviewed periodically and revised as necessary.

§ 230.61 Initial evaluation of dredged or fill material.

(a) An initial evaluation shall be conducted and documented to determine if there is reason to believe that any dredged or fill material to be discharged into waters of the United States contains any contaminant above background level. This initial evaluation will be used in assigning the proposed discharge to a category for testing. This evaluation should be accomplished with existing data on file with or readily available to the permitting authority; Regional Administrator, EPA; and other public and private sources, as appropriate. Factors which may be considered for the extraction site and, if appropriate, the disposal site, include, but are not limited to, the following:

(1) Potential routes of introduction of specific contaminants. These may be identified by examining maps, aerial photographs, and other graphic materials that show watercourses, surface relief, proximity to tidal movement, private and public roads, location of buildings, agricultural land, municipal and industrial sewage and storm outfalls, etc., or by making field inspections.

(2) Previous tests on the material at the extraction site or on samples from other similar projects in the vicinity, when there are similarities of sources and types of contaminants, water circulation and stratification, accumulation of sediments, general sediment characteristics, and potential impact on the aquatic environment, as long as no known changes have occurred to render the comparisons inappropriate.

(3) The probability of past substantial introduction of contaminants from land runoff (e.g., pesticides).

(4) Spills of toxic substances or substances designated as hazardous under Section 311 of the Clean Water Act (see 40 CFR Part 116).

(5) Substantial introduction of pollutants from industries.

(6) Source and previous use of materials proposed for discharge as fill.

(7) Substantial natural deposits of minerals and other natural substances.

(b) Before the permitting authority concludes that there is no reason to believe that contaminants are present in the discharge material above background levels, he should consider all relevant, reasonably available information which might indicate its presence. However, if there is no information indicating the likelihood of such contamination, the permitting authority may conclude that contaminants are not present above background levels. Examples of documents and records in which data on contaminants may be obtained are:

(1) Report of Pollution Caused Fish Kills (U.S. EPA)

(2) Selected Chemical Spill Listing (U.S. EPA)

(3) Pollution Incident Reporting System (U.S. CG)

(4) Surface Impoundment Assessment (U.S. EPA)

(5) Identification of In-Place Pollutants and Priorities for Removal (U.S. EPA)

(6) Revised Status Report-Hazardous Waste Sites (U.S. EPA)

(7) Hazardous Waste Management Facilities in the United States—1977 (U.S. EPA)

(8) Corps of Engineers Studies of Sediment Pollution

(9) Sediment Tests for Previously Permitted Activities (U.S. CE/District Engineers)

(10) Pesticide Spill Reporting System (U.S. EPA)

(11) STORET (U.S. EPA)

(12) Past 404(b)(1) Evaluations

(13) USGS Water and Sediment Data on Major Tributaries

(14) Pertinent and Applicable Research Reports

(15) NPDES Permit Records

§ 230.62 Detailed evaluation, including possible testing of dredged material.

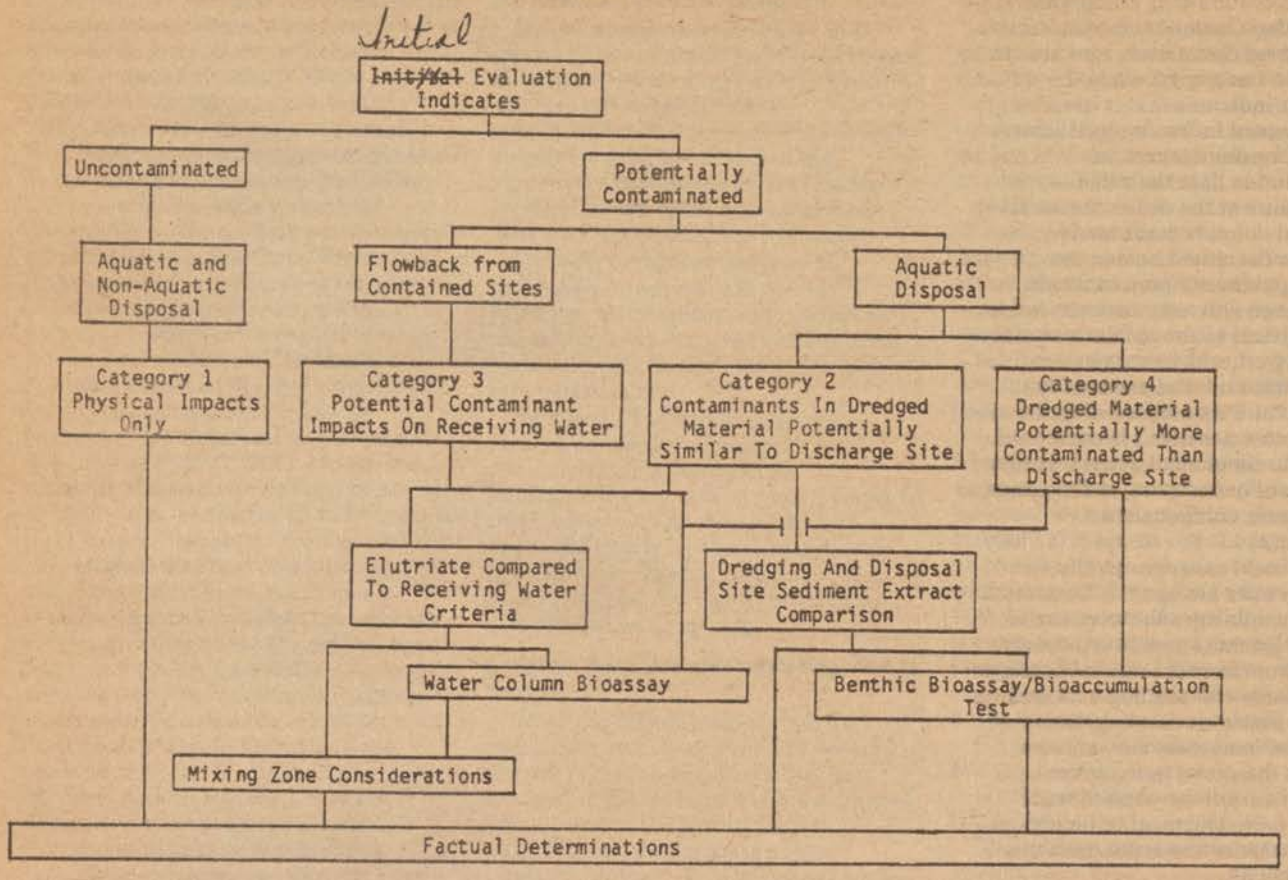
(a) Based on the outcome of the initial evaluation made pursuant to § 230.61, dredged material proposed for discharge will be assigned to one of four categories for its detailed technical evaluation. Figure 1 illustrates how evaluation under these categories leads

to factual determinations required under § 230.11. The following paragraphs describe the categories, the testing (if any) required under each, and how this evaluation leads to the factual determinations.

(b) *Category 1: Discharge Without Potential for Environmental Contamination.* (1) Dredged material falls into Category 1 when the initial evaluation does not indicate the presence of contaminants in the dredged material above background levels. Consequently, the only concern is the direct physical effects of the material to be discharged, and there is no need to compare this material chemically to sediments at the proposed disposal site. Dredged material which is composed predominantly of sand, gravel, shell or other naturally occurring sedimentary material with particle sizes predominantly larger than silt is likely to, but does not always, qualify for inclusion under Category 1. Generally, these materials are characteristic of areas of high current or wave energy, such as streams with large bedloads or coastal areas with shifting bars and channels. However, noncontaminated fine-grained materials may also be shown by the precategorization elevation to meet the conditions of Category 1. No chemical or biological testing is required to make the factual determinations.

BILLING CODE 6560-29-M

Fig. 1. Testing Flow Chart



N.B. Follow every line out of a box, and if a line branches, follow one or the other branch.

BILLING CODE 6560-29-C

(c) *Category 2: Open Water Discharge with Level of Contamination Similar to the Discharge Site.* Discharges should be assigned to Category 2 when the initial evaluation indicates that contaminants may be present in the dredged material above background levels, but will not be more available than the same contaminants at the disposal site. If this initial evaluation is confirmed by the evaluation described below, the permitting authority may conclude that the discharge will not cause substantive harmful effects to the resident aquatic community other than the physical effects caused by placement of the material. The Category 2 evaluation must consider possible effects on both the benthic component of the aquatic environment under § 230.62(c)(1) and the water-column component under § 230.62(c)(2).

(1) *Sediment assessment.* Chemical extraction tests are used in Category 2 to assess similarities in the potential for long-term leaching and bioavailability of contaminants from the dredged material and discharge site sediments. Research generally indicates that only the fractions of inorganic contaminants which are dissolved in the interstitial water and loosely associated with sediment particles are available to organisms. Since these fractions are measured in a water extract, the appropriate extractant for inorganic contaminants in Category 2 sediment assessments is water. For some organic contaminants, however, extraction with a solvent other than water may be appropriate. Analysis of organic chemicals in sediments is a rapidly advancing field. Analytical methods are being developed for compounds for which none now exist and methods which do exist are subject to rapid obsolescence. Therefore, sediment extraction techniques must be selected for the specific contaminants of concern at the time the need arises. The appropriate extractant for comparing the availability of organic contaminants to organisms from the dredged material and discharge site sediment is a polar or non-polar solvent that effectively extracts the contaminant of concern from the sediment in a reproducible manner.

(i) *Testing protocol.* Chemical analyses shall be conducted on the extracts of the sediment at the dredging and disposal sites. The location and number of sampling stations and replicates shall be designed specifically for the sites being evaluated. Test results shall be used to determine whether the concentrations of those contaminants identified during the § 230.61 evaluation are substantively greater in the dredged material than in the disposal site sediment.

(ii) *Need for additional testing.* Further testing of the impact of contaminants on the benthic component of the environment is required for the factual determinations only when the above comparative analysis indicates substantively greater concentrations of contaminants in the sediments to be discharged than in the disposal site sediments. In such cases, the proposed dredged material will be evaluated further using the benthic assessment protocol for Category 4 under § 230.62(e)(1). For all other situations no further testing for contaminants is required to make the factual determinations of § 230.11 relating to chemical contamination of sediments.

(2) *Water-column assessment.* The potential for short-term water-column impacts is assessed in Category 2 by the standard elutriate test or, under the special circumstance described below, by a water-column bioassay. Generally, the appropriate test is a chemical comparison of the concentration of contaminants in the elutriate of the proposed dredged material with the concentration in the receiving water (See paragraph (c)(1)(i) of this section). These concentration values are then used with the appropriate water quality standard or criterion to calculate a mixing zone.

(i) *Chemical comparison protocol.* Chemical analyses shall be conducted on the receiving water and on the elutriate of the dredged material. The location and number of sampling stations and replicates shall be designed specifically for the dredging and disposal sites being evaluated. Test results shall be used to determine whether, after consideration of mixing, the discharge will substantively increase concentrations of those contaminants identified during the § 320.61 evaluation in solution at the disposal site.

(ii) *Mixing zone determination.* The size of the mixing zone will be calculated pursuant to § 230.64 for the contaminant requiring the greatest dilution volume, as determined from the elutriate analyses, to meet applicable water quality standards, or, if none, Federal water quality criteria established by EPA. The selected standard or criteria shall define the perimeter of the mixing zone.

(iii) *Need for additional testing.* Further testing for contaminants in relation to the water-column component of the environment may be required to make the factual determinations when concentrations in the elutriate of the sediment to be discharged are substantively greater than concentrations in the composite sample of the receiving water and either the calculation of a mixing zone using the appropriate water quality standards or criteria does not provide sufficient information to make an assessment of water-column impacts or the receiving water concentration exceeds the standard or criterion, making dilution to this standard or criterion impossible. Such further testing for water-column effects will consist of a water-column bioassay conducted according to § 230.62(f). No further testing for contaminants is required to make the factual determinations for all other situations, except as provided in § 230.60(b)(1).

(d) *Category 3: Contained, Confined, or Other Disposal Operations of Material with Potential for Contamination of the Water Column Only.* Discharge of dredged material should be assigned to Category 3 when all but the return water, including suspended particles, is confined or contained sufficiently to prevent the long-term availability of contaminants to the aquatic community, and there is reason to believe the concentration of contaminants in the return water are above ambient levels in the receiving water. The Category 3 evaluation consists of consideration of possible impacts to the receiving water column.

(1) *Water-column assessment.* The potential for short-term water-column impacts is assessed in Category 3 by an elutriate test, or under the special circumstance described below, by a water-column bioassay. Generally, the appropriate test is a chemical comparison of the concentration of contaminants in the elutriate of the proposed dredged material with the concentration in the receiving water. These concentration values are then used with the appropriate water quality standards or criteria to calculate a mixing zone. Where retention time within the containment area will be of short duration, the standard elutriate test can be used to estimate the concentration of those contaminants that will be released in the effluent. Where the containment area is managed for maximum solids retention and, consequently, the liquid is retained for long periods, a modified elutriate test should be used, considering biological, chemical and physical changes that may occur in the containment area. Settleability tests should be conducted to simulate the actual retention time.

(2) *Chemical comparison protocol.* Chemical analyses shall be conducted

on the receiving water and on the elutriate of the dredged material. The location and number of sampling stations and replicates shall be designed specifically for the dredging and disposal sites being evaluated. Test results shall be used to determine whether, after consideration of mixing, the discharge will substantively increase concentrations of those contaminants identified during the § 230.61 evaluation in solution at the disposal site.

(3) *Mixing zone determination.* The size of the mixing zone will be calculated pursuant to § 230.64 for the contaminant requiring the greatest dilution volume as determined from the elutriate analyses, to meet applicable water quality standards or, if none, Federal water quality criteria established by EPA. The selected standard or criteria shall define the perimeter of the mixing zone.

(4) *Need for additional testing.* Further testing for contaminants in relation to the water-column component of the environment may be required to make the factual determinations when concentrations in the elutriate of the sediment to be discharged are substantively greater than concentrations in the composite sample of the receiving water and either the calculation of a mixing zone using the appropriate water quality standards or criteria does not provide sufficient information to make an assessment of water-column impacts or the receiving water concentration exceeds the standard or criterion, making dilution to this standard or criterion impossible. Such further testing for water-column effects will consist of a water-column bioassay conducted according to § 230.62(f). No further testing for contaminants is required to make the factual determinations for all other situations, except as provided in § 230.60(b)(1).

(e) *Category 4: Open Water Discharge With Potential for Harm.* Uncontained or unconfined dredged material will be assigned to Category 4 when the initial evaluation indicates the dredged material contains biologically available contaminants in amounts which have the potential for substantive environmental harm. The Category 4 evaluation considers possible effects on both the benthic and water-column components of the aquatic environment.

(1) *Benthic assessment.* The required tests are a benthic bioassay and an investigation of bioaccumulation potential. Due to the infant state-of-the-art in bioaccumulation procedures and the technical uncertainty in the ecological interpretation of bioaccumulation data, the permitting authority may find that such tests or scientific literature for interpretation of results have not been defined in the Corps/EPA implementation manual for specific contaminants. In such cases, the permitting authority may waive the requirement for bioaccumulation tests for these specific contaminants, provided he notifies the Regional Administrator prior to making the factual determinations.

(i) *Selection of appropriately sensitive organisms.* The sensitivity of these procedures is dependent primarily on the selection of appropriate species. The species should be selected from appropriately sensitive aquatic organisms as determined by the permitting authority. A minimum of one benthic and one epibenthic species shall be used for bioassays. At least one benthic or epibenthic species of sufficient size with limited mobility, and with a propensity for accumulating the identified contaminants, shall be used in bioaccumulation tests if any are conducted. The species designated for bioaccumulation tests may be one or more of those used in the bioassay.

(ii) *Benthic bioassay protocol.* Results of a benthic bioassay will be used to compare survival in sediment from the dredging site with survival in a sedimentologically similar reference substrate from within or near the disposal site. If survival of the test organisms is similar, then no increased toxic effects to the benthic community should result from the discharge. Should statistically significant decreases in survival in the dredged material be observed, then the permitting authority will assess the substantive effects of the contaminated discharge in making the factual determinations.

(iii) *Bioaccumulation protocol.* The bioaccumulation potential of those contaminants identified in the initial evaluation procedures of § 230.61 or in previous tests shall be assessed by comparing the concentrations in the tissues of the designated organism exposed to the sediments to be dredged with the concentrations in the tissues in the same species exposed to a sedimentologically similar reference substrate from within or near the disposal site. Bioaccumulation potential is indicated when the concentrations of the contaminants in the tissue of the organisms exposed to the sediments to be discharged are significantly greater statistically than those concentrations in the tissues of the organisms exposed to the reference substrate. Where there is bioaccumulation potential, the permitting authority must assess the substantive effects of the contaminated discharge in making the factual determinations.

(A) A comparative field assessment will be used when dredged material from the dredging site in question has been discharged at the proposed disposal site during previous activities and the § 230.61 evaluation indicates that the dredged material has not become more contaminated since the last disposal operation; or

(B) When such a field assessment is not practicable, assessment will be performed using animals exposed in the laboratory bioassay protocol of § 230.62(e)(1)(ii).

(iv) *Need for additional testing.* No further benthic bioassay or bioaccumulation potential testing is required to make the factual determinations.

(2) *Water-column assessment.* The required test is a water-column bioassay under § 230.62(f). The mixing zone must be considered in interpreting the test results and making the factual determinations.

(f) *Water-column bioassay protocol.* An acute bioassay will be used to compare survival in the unfiltered elutriate from the material to be dredged with survival in an unfiltered composite sample representing the entire water-column at the disposal site. The location and number of sampling stations and replicates shall be designed specifically for the dredging and disposal sites being evaluated. Test results shall be used to determine whether, after consideration of mixing, the discharge will cause a substantive increase in toxic effects in the water-column at the disposal site. If the survival of test organisms is similar in the elutriate and receiving water, then increased toxic effects in the water-column should not result from the discharge. Should statistically significant decreases in survival in the elutriate be observed, then the mixing zone will be calculated based on the 96-hour LC 50 of the elutriate from the bioassay results.

(1) *Selection of appropriately sensitive organisms.* The sensitivity of the water-column bioassay is dependent primarily on the selection of appropriate species. Test species should be representative of animals in the aquatic community at the site of the proposed discharge. Test organisms should be selected from appropriately sensitive aquatic species. A minimum of one vertebrate and one invertebrate aquatic species shall be used.

(2) *Mixing zone determination.* The size of the mixing zone will be calculated pursuant to §230.64 such that the perimeter is defined by 0.01 of the

lowest 96-hour LC 50 observed in the bioassay.

(3) *Need for additional testing.* No further testing for contaminants in relation to the water-column component of the environment is required to make the factual determinations, except as provided in § 230.60(b)(1).

§ 230.63 Detailed evaluation, including possible testing, of fill material.

Based on the outcome of the initial evaluation made pursuant to § 230.61, natural or man-made material from upland sources proposed for discharge as fill will be assigned to one of two categories for technical evaluation. Dredged material used as fill will be evaluated under § 230.62.

(a) *Category 5: Discharge without Potential for Environmental Contamination.* Discharge of fill material falls into Category 5 when the initial evaluation does not indicate the presence of contaminants in the fill material above background levels or when such contaminants will be adequately contained to prevent leaching and/or erosion. No chemical or biological testing is required to make the factual determinations.

(b) *Category 6: Discharge of Fill Material with Potential for Environmental Contamination.* Discharge of fill material falls into Category 6 when the § 230.61 initial evaluation indicates contaminants may be present in the fill material above background levels and the permitting authority determines that there is a potential for leaching. The water leachate test is appropriate.

(1) *Testing protocol.* Samples of the fill material will be subjected to a water leachate test. From this testing the permitting authority shall determine whether the concentration of each contaminant identified during the § 230.61 evaluation is substantially greater than the appropriate existing Federal or State water quality standard. No dilution factor or mixing zone determination shall be considered.

(2) *Need for additional testing.* No further testing for contaminants of concern is required to make the factual determinations, except as provided in § 230.60(b)(1).

§ 230.64 Mixing zone determinations.

A limited mixing zone, serving as a zone of initial dilution and dispersion in the immediate vicinity of the discharge point for dredged material, is allowed unless specifically prohibited by applicable water quality standards. Because water quality standards regarding concentrations of contaminants may be exceeded within the mixing zone, limitations must be placed on its size, shape, and location. Also, factors that will contribute to water degradation other than unacceptable levels of contaminants must be limited. The permitting authority shall consider each contaminant identified as present within the dredged material in light of its potential effect upon any element of water quality prescribed in applicable water quality standards or criteria. Such standards or criteria may establish specific numerical limitations upon the permissible concentration of the contaminant itself and/or upon the extent to which the discharge may alter a specified parameter of water quality after interaction of the contaminant with ambient water (for example, BOD or DO).

(a) *Mixing zone calculations.* The perimeter of the mixing zone shall be defined by the applicable water quality standard of the contaminant requiring the greatest dilution volume, or by 0.01 of the lowest 96-hour LC 50 when a water-column bioassay has been conducted.

(1) One of the following methods (provided in order of preference) shall be used to determine the volume and conformation of the zone required to achieve dilution and dispersal of contaminants to numerical limitations specified in Federal or State water quality standards or to 0.01 of the lowest 96-hour LC 50, as indicated above.

(i) When field data on the proposed discharge are adequate to predict the initial dispersion and diffusion of the discharge plume, such data shall be used; or

(ii) When field data on the dispersion and diffusion of a discharge with similar characteristics are available, these data shall be used in conjunction with an appropriate mathematical model (acceptable to the permitting authority) to make the required determination; or

(iii) When the above methods are impractical, due to inadequate field data or the unavailability of an appropriate mathematical model, the zone of dilution and dispersion may be estimated by assuming particular geometrical shapes for the disposal plume.

(2) Factors important in determining the shape and trajectory of the discharge plume and the volume of the zone of dilution and dispersal include the following:

(i) Surface area and water depth at the disposal site;

(ii) Current velocity, direction and variability at the disposal site;

(iii) Degree of turbulence;

(iv) Stratification attributable to causes including but not limited to obstructions, salinity, or density profiles at the disposal site;

(v) Discharge vessel speed and direction if appropriate;

(vi) Time to empty vessel or length of discharge;

(vii) Ambient concentration of contaminants;

(viii) Dredged material characteristics, particularly concentrations of constituents, amount of material, types of material (sand, silt, clay, etc.), and settling velocities;

(ix) Rate of discharge;

(x) Number of discharge actions per unit of time; and

(xi) Other characteristics of the disposal site that affect the rates and patterns of mixing.

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federal register

Wednesday
December 24, 1980

Part VI

Department of the Interior

Bureau of Land Management

Qualified Joint Bidders; Outer Continental Shelf (OCS)

4310-84

DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Qualified Joint Bidderr
Outer Continental Shelf (OCS)

As a convenience to the public, and pursuant to his authority under 43 CFR 3316, the Director of the Bureau of Land Management hereby publishes a list of all persons who have timely filed a sworn statement of production in accordance with 43 CFR 3316.3-2(a). These statements have qualified the filers to bid jointly at OCS oil and gas lease sales during the bidding period of November 1, 1980, through April 30, 1981. This publication is not required by law or regulations. It includes the names of all possible bidders whose statements have been received in this office by the date this notice was prepared.

The following persons or companies have filed sworn statements of production as required by 43 CFR 3316.3-2(a) attesting to average daily production not in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products during the production period of January 1, 1980, through June 30, 1980.

A.G. Hill
AGT Exploration Corp.
Al-Aquitaine Exploration, Ltd.
Alaskco U.S.A., LTD.
Allied Chemical Corporation
ALMINEX U.S.A., Inc.
Amax Petroleum Corporation
Amerada Hess Corporation
American Petrofina Company of Texas
American Petrofina Exploration Company
Aminoil Development, Inc.
Aminoil U.S.A., Inc.
American Natural Gas Production Company
Amoco Production Company
ANR Production Company
Anadarko Production Company
Apache Corporation

Atlantic Richfield Company
Broken Hill Proprietary Holdings (USA) Inc.
Brooklyn Union Gas Company
Bunker Exploration Company
C & K Marine Production Company
C & K Offshore Company
C & K Petroleum, Inc.
Cabot Corporation
Cambridge Royalty Company
Canadian Occidental of California, Inc.
CANADIAN SUPERIOR OIL (U.S.) LTD.
CanDel Oil Corporation
CanDel Oil (U.S.) Inc.
CanDel Oil (Texas Offshore) Inc.
Caroline Hunt Schoellkopf
Caroline Hunt Trust Estate
Central Hudson Gas & Electric Corporation
Challenger Minerals, Inc.
Champlin Petroleum Company
Cities Service Company
CL&E Corporation
CNG Producing Company
Conex, Inc.
Conoco, Inc.
Consolidated Edison Company of New York, Inc.
Coquina Oil Corporation
Corning Natural Gas Corporation
Corpus Christi Exploration Company
Corpus Christi Oil and Gas Company
Cotton Petroleum Corporation
Crescent Investment Company
Crown Central Petroleum Corporation
D. H. Hunt
DEPCO, Inc.
Diamond Shamrock Corporation
Dow Chemical Company
Eason Oil Company
Ecee, Inc.
Elf Aquitaine, Inc.
Elizabethtown Gas Company
El Paso Exploration Company
El Paso Natural Gas Company
Emmet C. Wilson
Energy Ventures, Inc.
Enserch Exploration, Inc
Entex Petroleum, Inc.
Exchange Oil and Gas Corporation
FB Energy Corporation
F. Rivers Lelong
Finadel, Incorporated
Fin-Oil, Inc.
Florida Exploration Company
Fluor Oil and Gas Corporation
Forest Oil Corporation
Four M Properties, Ltd.
Freeport Oil Company
Freeport Petroleum Company
Fuel Resources Inc.
Furth Oil Co.
General American Oil Company of Texas
Getty Oil Company
Greenbrier Operating Co.
Hamilton Brothers Oil Company
Haroldson L. Hunt Jr. Trust Estate
Hassie Hunt Exploration Company
Hassie Hunt, Incorporated
Hassie Hunt Trust
Highland Resources, Inc.
Houston Oil & Minerals Corporation
Howard A. Day
Hudbay Exploration, Inc.
Hunt Energy Corporation
Hunt Industries
Hunt Investment Corporation
Hunt Oil Company
Hunt Petroleum Corporation
Husky Oil Company
H.W. Bass & Sons, Inc.
Idemitsu Alaska Oil Development Corp.
Idemitsu Oil Denver Corp.
Inexco Oil Company
Impkemix Inc.
Internorth, Inc.
Jenny Oil Company
Kerr-McGee Corporation
Knob Hill Oil & Gas Company, Inc.
Koch Industries, Inc.
Ladd Petroleum Corporation
Lamar Hunt
Lamar Hunt Trust Estate
Laurence A. McNeil
Louisiana Land and Exploration Company (The)
Louisiana Land Offshore Exploration Company, Inc.
MAPCO Inc.
Marathon Oil Company
Margaret Hunt Trust Estate
McMoran Offshore Exploration

Mesa Petroleum Company
Mitchell Energy Offshore Corporation
Mono Power Company
Monsanto Company
Murphy Oil Corporation
N.B. Hunt
N. T. Corporation
National Exploration Company
Natomas Offshore Exploration, INc.
NATRESCO INCORPORATED
Natural Gas Corporation of California
Nelson Bunker Hunt Trust Estate
New England Energy Incorporated
Newmont Oil Company
New York State Electric & Gas Corporation
Niagara Mohawk Poser Corporation
NICOR Exploration Company
Norse Petroleum (U.S.) Inc.
Nortex Gas & Oil Company
North Oil Inc.
Northern Michigan Exploration Company
Northwestern Mutual Life Insurance Company (The)
Numac Oil and Gas Inc.
Ocean Oil & Gas Company
Ocean Production Company
Ogle Petroleum Inc.
ONG Exploration, Inc.
Orange and Rockland Utilities, Inc.
OXY Petroleum, Inc.
P. R. Rutherford as Independent Executor of the Estate of Betty T. Rutherford, Deceased
PanCanadian Petroleum Company
Pan Eastern Exploration, Company
PAN ENERGY Resources, Inc.
Paragon Petroleum Inc.
Paul R. Haas
Pel-Tex Exploration Company, Inc.
Pelto Oil Company
Pennzoil Oil & Gas, Inc.
Pennzoil Producing Company
Pentad Resources, Inc.
Phillips Petroleum Company
Pinto, Inc.
Pioneer Production Corporation
Placid Oil Company
Pogo Producing Company
Propel Energy Company
Prosper Energy Corporation
Pursue Energy Corporation
Quintana Offshore, Inc.
Quintana Oil and Gas Corporation
Reading & Bates Petroleum Co.
Robert A. Day, Jr.
Robert L. Duncan
Rochester Gas and Electric Corporation
Rosewood Corporation, (The)
Rowan Petroleum, Inc.
Rutherford Oil Corporation
Rutherford Offshore Corporation
Rutherford Partnership (The)
SHV Energy Corporation
Sabine Production Company
Salomon Brothers HOlding Company
Salomon Brothers International, Inc.
Samedan Oil Corporation
Santa Fe Energy Company
Santa Fe Minerals, Inc.
Seneca Resources Corporation
Shore Oil Corporation
SONAT Exploration Company
Southern Natural Gas Company
Southland Royalty Company
Strata Energy Inc.
St. Joe Petroleum (U.S.) Corporation
St. Lawrence Gas Company, Inc.
Sun Oil Company (Delaware)
SUPERIOR OIL COMPANY (The)
Syracuse Suburban Gas Company, Inc.
Tammis Day Trust II
Tenneco Exploration, Ltd.
Tenneco Exploration, II, Ltd.
Tenneco OCS Company, Inc.
Tenneco OCS Limited Partnership
Tenneco Offshore Company, Inc.
Tenneco Oil Company
Terra Resources, Inc.
Tesoro Petroleum Corporation
Texas Eastern Exploration Co.
Texas Gas Exploration Corporation
Texasgulf, Inc.
Texas Pacific Oil Company, Inc.
Texas Production Company
Texoma Production Company
Theodore J. Day
Three Cities Exploration, Inc.
Total Petroleum, Inc.
Transco Exploration Company
TransOcean Oil, Inc.

Unidel Oil Corporation
Union Oil Company of California
Vsea, Inc.
W.H. Hunt
Wainoco Oil and Gas Company
Weeks Exploration Company
Weeks Petroleum Corporation
Westover Oil Company
William Herbert Hunt Trust Estate
Willametta K. Day Trust
Williams Exploration Company
Zapata Exploration Company

In addition, Statements of Production have been received from twelve companies which provided a daily average of 1.6 million barrels or more of crude oil, natural gas and liquified petroleum products during the previous-mentioned production period and therefore are restricted from bidding jointly with each other during the bidding period of November 1, 1980, through April 30, 1981.

This list appeared in the Federal Register on Thursday, October 2, 1980, at 45 FR 65324. Also see amendments to 43 CFR 3316 published in the Federal Register, on Friday, October 17, 1980, at 45 FR 69174. The change will require only those companies which have a daily average of 1.6 million barrels or more of crude oil, natural gas and liquified petroleum products to file Statements of Production with the Bureau of Land Management in following bidding periods.

Ed Hastey
Associate Director, Bureau of Land Management

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Part VII

Department of the Interior

Office of the Secretary

Regulatory Flexibility Act; Interim Rule Implementing; Request for Comments

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 14

Interim Rule Implementing the Regulatory Flexibility Act; Request for Comments

AGENCY: Department of the Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of the Interior's rulemaking procedures are being revised to implement the Regulatory Flexibility Act (Pub. L. 96–354).

The Act requires Federal agencies to take into consideration and analyze the effects of their rules on small businesses, small organizations, and small governmental jurisdictions.

Those portions of the Department's procedures which are new or revised are highlighted by arrows in the text of the rule.

DATES: This rule is effective January 1, 1981. Comments must be received on or before February 9, 1981.

ADDRESSES: Written comments should be sent to: Chief, Division of Directives and Paperwork Management, Office of Information Resources Management, Room 7357, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jim Douglas, Office of Policy Analysis, 202–343–8501, Deborah Ryan, Office of the Solicitor, 202–343–5216.

SUPPLEMENTARY INFORMATION: On December 13, 1978 (43 FR 58295), a final rule was issued by the Secretary of the Interior to implement Executive Order 12044 (E.O. 12044), "Improving Government Regulations", in the Department of the Interior. The rule established a four part process for developing new rules or revising existing rules. Initially, all rules under development must be examined to determine whether the rules will, if promulgated, be "significant" under specific criteria. Rules found to be significant are subject to additional scrutiny to determine whether a regulatory analysis of the rule is necessary. Performing a regulatory analysis on the effects of major rules constitutes the second part of the process.

Significant rules must be developed in a specific manner which allows for public participation and review of alternatives. Significant rules must be approved by the Secretary, or by a Secretarial Officer authorized by the Secretary. Rules that are not significant do not require special development procedures.

Periodic review of existing rules to assure their continuing relevance, adequacy, and consistency with other related rules and policies constitutes the third part of the process. Finally, a semi-annual agenda of rules under development and review is published to provide public notice and information about rulemaking activity and review.

Regulatory Flexibility Act

On September 19, 1980, the President signed into law the Regulatory Flexibility Act (Pub. L. 96–354) which amends the Administrative Procedure Act (5 U.S.C. 101 *et seq.*) by adding a new Chapter 6, "The Analysis of Regulatory Functions." The purpose of the Regulatory Flexibility Act is to establish as a principle of rulemaking that, whenever possible, agencies will fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to the rule.

Because the provisions of the Act become effective on January 1, 1981 an interim rule is being published at this time. Good cause exists for waiver of the usual 30-day waiting period for effectiveness so that the procedures will be in effect on January 1.

Because these rules relate to agency practice and procedure, the Administrative Procedure Act does not require that they be subject to public notice and comment. Consistent with the Department's public participation policy and the spirit of the Regulatory Flexibility Act, however, public comments on the rule are invited. After consideration of public comments, and an evaluation of the efficiency of the interim rule, a final rule will be published.

Under the Regulatory Flexibility Act special attention is to be given to the effects of rules on small entities through the publication of agendas of rules, analysis of the anticipated effects of rules, public participation in the development of rules, and review of existing rules. At the onset of the rulemaking process a determination must be made as to whether the rule, if promulgated, will have a "significant economic effect on a substantial number of small entities." If it will have such an effect, an initial, and later a final, small entity flexibility analysis is required to assess the effects of the rule on small entities and to consider alternatives that are consistent with the objectives of the rule and applicable statutes, which fit the scale of affected small entities. In addition, the rulemaking process for rules determined to have a significant economic effect on a substantial number of small entitites must be tailored to accommodate and encourage participation by small entities.

Since the central elements of the Regulatory Flexibility Act are generally consistent with those of E.O. 12044, the Department of the Interior is revising its rules implementing the Executive Order to establish concurrent compliance with both authorities. The changes and revisions discussed below are largely additions to the existing rules to include the requirements of the Regulatory Flexibility Act. Part 14 has, however, been reorganized to incorporate in a clear and logical manner the requirements of the Act and the Executive Order.

Under the revised procedures the Department will continue to publish a semiannual agenda of rules under development and review, although the dates of publication are changed from January and July of each year to April and October. In addition, the content of agenda entries is expanded to incorporate the requirements of the Regulatory Flexibility Act. Periodic reviews of existing rules ("sunset reviews") will continue to be performed without change. The Department's five-year cycle is more stringent than required under the statute and is retained. However, the statutory requirement that reviews be completed within one year is adopted.

At the onset of each rulemaking procedure, the Secretary or Secretarial Officer will be required to make two distinct findings. First, the determination of significance under E.O. 12044; second, a determination of the effects on small entities. Since both determinations are based on similiar criteria and must be made at the initiation of the rulemaking process, it is expected that one document will be used in making both determinations. However, § 14.3(b)(2) clearly specifies that the determination of effect on small entities is a determination separate from and in addition to the determination of significance and that a "significant" rule does not necessarily have a significant economic effect on a substantial number of small entities, or *vice versa*.

The development process for "significant" or "other" rules is not changed by the revisions to Part 14. However, requirements are added for the development of rules determined to have a significant economic effect on a substantial number of small entities, regardless of their "significance."

Primarily, preparation of "small entity flexibility analyses" for such rules is required. Although the Regulatory

Flexibility Act uses the term "regulatory flexibility analyses," the term "small entity flexibility analyses" is used in this rule to avoid confusion with "regulatory analyses" required under E.O. 12044.

In addition to the preparation of such analyses, rules determined to have a significant economic effect on a substantial number of small entities must be developed in a manner that encourages and accommodates participation by small entities. Both the preparation of flexibility analyses and the participation of affected small entities are designed to maximize consideration of regulatory alternatives which lessen the burden on small businesses, small organizations and small governmental jurisdictions subject to regulation.

Section-by-Section Review

To assist the reader in understanding the revisions and additions to this Part, the following is a section-by-section review:

§ *14.1 Purpose and Scope:* This section has been revised to include the Regulatory Flexibility Act.

§ *14.2 Definition:* The definition of Secretarial Officer has been revised to include the Inspector General.

§ *14.3 Required determinations:* This section formerly discussed determinations of significance under E.O. 12044. It has been revised to discuss the two different determinations now required, approval authority, exceptions, and required statements in the **Federal Register**. Criteria for determinations of significance and needed regulatory analyses have been moved to § 14.4.

§ *14.4 Determination of significance and need for regulatory analysis:* This section contains the criteria for determination of significance under E.O. 12044 formerly found at § 14.3 (c) and (d). The criterion relating to reporting and recordkeeping has been revised to make it consistent with the Office of Management and Budget's proposed rules on controlling paperwork burdens on the public (45 FR 2586, January 11, 1980) and the Department's criteria for significant information collection.

§ *14.5 Determination of effect on small entities:* This is a new section implementing new 5 U.S.C. 605(b). Paragraph (a) defines "small business," "small organization," and "small governmental jurisdiction." The definitions of "small organization" and "small governmental jurisdiction" are those used in the Act. The definition of "small business" is drawn from the Small Business Act (15 U.S.C. 632), but an alternative is provided for rules promulgated under the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*) because that Act specifies a definition of "small operator." Paragraph (b) of § 14.5 sets out guidance for interpreting the terms "significant economic effect" and "substantial number." This guidance is general in nature to permit it to be adapted to the diverse programs which the Department administers. It is expected that Secretarial Officers will resolve doubts about the applicability of the criteria in favor of conducting small entity flexibility analyses. Paragraph (c) permits agency heads to certify that a proposed or final rule will not have a significant economic effect on a substantial number of small entities, thus not requiring the preparation of small entity flexibility analyses.

§ *14.6 Development of significant rules:* This section, previously § 14.4, has been revised to specify additional procedural requirements necessary to assure consideration of the effects of rules on small entities and to assure participation in the rulemaking process by small entities. Paragraph § 14.4(d)(2), which described the content of regulatory analyses, has been moved to a new § 14.8.

§ *14.7 Development of other rules:* This section, previously § 14.5, has been revised to assure that rules determined not to be significant under E.O. 12044 are developed in a manner that considers effects on small entities and assures participation in the process by small entities.

§ *14.8 Content of regulatory analyses:* This section was previously found at § 14.4(d)(2). No substantive revisions have been made.

§ *14.9 Content of small entity flexibility analyses:* This is a new section implementing new 5 U.S.C. 603 and 604. It sets out minimum specifications for the type of information and analyses to be contained in initial and final small entity flexibility analyses.

§ *14.10 Petitions for Rulemaking:* This section is renumbered from § 14.6 without change.

§ *14.11 Review of rules:* This section, previously § 14.7, contains minor revisions to the review criteria in paragraph (c). A new paragraph (d)(2) has been added to require the completion of all reviews within one year. Reviews of rules that may affect small entities may be extended by a Secretarial Officer, as provided in new 5 U.S.C. 610(a).

§ *14.12 Semiannual Agenda:* This section, previously found at § 14.8, has been revised so that separate agendas will not be published under the Executive Order and the statute. The publication dates have been changed from January and July of each year to April and October, and additional information requirements have been added to paragraph (b)(3).

Request For Comments

As discussed above, this rule does not substantively alter the Department's procedures for complying with E.O. 12044. Consequently, public comments are requested on those portions of the rule which implement the Regulatory Flexibility Act. New and revised portions of the procedures are highlighted with arrows. In particular, comments are requested on the following issues:

1. Definitions of small business, small organization, and small governmental jurisdiction. (§ 14.5(a))

2. Criteria for determining "significant economic effect" and "substantial number," including any criteria indicative of significant economic effects on small organizations and small governmental jurisdictions. (§ 14.5(b))

Drafting Information

The primary authors of this document are: Jim Douglas, Office of Policy Analysis (343–8501); Lois W. Paull, Office of Information Resources Management (343–6191); Deborah Ryan, Office of the Solicitor (343–5216); and John D. Trezise, Office of the Solicitor (343–5216). Assistance was provided by the Department's Office of Small and Disadvantaged Business Utilization.

Statement of Significance

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

Larry E. Meierotto,

Assistant Secretary—Policy, Budget and Administration.

December 18, 1980.

(In the following text ►◄ indicates new or revised material)

43 CFR Part 14 is revised as follows:

PART 14—RULEMAKING

Sec.

►14.1 Purpose and scope.
14.2 Definitions.
14.3 Required determinations.
14.4 Determination of significance and need for regulatory analysis.
14.5 Determination of effects on small entities.
14.6 Development of significant rules.
14.7 Development of other rules.
14.8 Content of regulatory analyses.
14.9 Content of small entity flexibility analyses.

Sec.
14.10 Petitions for rulemaking.
14.11 Review of rules.
14.12 Semiannual agenda.

Authority: E.O. 12044, 43 FR 12661, March 24, 1978; Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601) September 19, 1980.

§ 14.1 Purpose and scope.

(a) *Purpose.* This part contains the policies and procedures of the Department of the Interior for adoption of rules. These policies and procedures incorporate the requirements of the Administrative Procedure Act, Executive Order 12044, "Improving Government Regulations" (March 23, 1978) and the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980).

(b) *Scope.* The principal sections of this part deal with procedures for determining the significance of rules (§ 14.4); procedures for determining the effect of rules on small entities (§ 14.5); procedures for development of "significant" rules and preparation of regulatory analyses (§ 14.6); procedures for development of other rules (§ 14.7); the method by which members of the public may petition for rulemaking (§ 14.10); and procedures for periodic review of existing rules (§ 14.11).

(c) *Applicability of part.* The procedures contained in this part are applicable to all rules for which a notice of proposed rulemaking is issued, or which are published as final rules without a notice of proposed rulemaking, on or after January 1, 1981. For the procedures applicable to rules for which a notice of proposed rulemaking was issued before January 1, 1981, see 43 CFR Part 14 (1979) (source: 43 FR 58292, December 13, 1978; 44 FR 23086, April 18, 1979).

(d) *Exceptions.* (1) The policies and procedures of this part do not apply to:

(i) Rules which are required by statute to be made on the record after an opportunity for a formal hearing under the procedures for such hearings contained in 5 U.S.C. 556 and 557;

(ii) Rules involving a foreign or military affairs function of the United States; and

(iii) Rules related to agency management or personnel.

(2) Further, for the purposes of § 14.5 (*Determination of effect on small entities*) and § 14.9 (*Content of small entity flexibility analyses*) only, the term "rule" does not include a rule of particular applicability relating to: (i) Rates, wages, corporate or financial structures or reorganizations; (ii) Prices, facilities, appliances, services, or allowances therefor; or (iii) Valuations, costs or accounting, or practices bearing on any of the foregoing. (Pub. L. 96–354, 601(2)) ◄

§ 14.2 Definitions.

(a) *Secretary.* "Secretary" means the Secretary of the Interior.

(b) *Secretarial Officer.* "Secretarial Officers" are the Under Secretary, the Solicitor, the Inspector General, and the Assistant Secretaries.

(c) *Bureau.* "Bureau" refers to all bureaus and offices of the Department of the Interior, including the Office of the Secretary and the Other Departmental Offices.

(d) *Lead Official.* "Lead official" means the official assigned responsibility for developing a rule. The designation of a lead official is the initial responsibility of the bureau developing the rule, but may be reviewed by the Secretarial Officer having jurisdiction over the bureau.

(e) *Rule.* "Rule" means a statement of general or particular applicability and future effect which implements, interprets or prescribes law or policy or describes the organization, procedure or practice requirements of the Department. (5 U.S.C. 551(4))

► **§ 14.3 Required determinations.**

(a) *Significance.* (1) Before developing a new rule or amending an existing rule, the lead official must determine whether the rule or amendment will be a significant rule. (See § 14.4 *Determination of significance and need for regulatory analysis* for criteria) This determination must be in writing, state whether or not the rule is significant, and briefly describe the basis of the determination.

(2) If a rule is determined to be significant, the bureau developing or amending the rule will follow the procedures described in § 14.6 *(Development of significant rules).* If a rule is determined not to be significant, the bureau will follow the procedures described in §14.7 *(Development of other rules).* ◄

(3) If a rule is determined to be significant, the lead official must also determine whether a regulatory analysis of the economic consequences of a rule is required. This decision should ordinarily be made at the same time as the determination of significance. (See § 14.4 *Determination of significance and need for regulatory analysis* and § 14.6 *Development of significant rules.*) In some cases, the need to collect additional economic information may necessitate postponement of the decision. In these cases, a decision on preparation of a regulatory analysis should be made no later than the beginning of the drafting of the proposed rule.

►(b) *Effect on small entities.* (1) Before developing a new rule or amending an existing rule, the lead official also must determine whether the rule will have a significant economic effect on a substantial number of small entities. (See § 14.5 *Determination of effect on small entities* for criteria.) This determination must be in writing, state whether or not the rule will have a significant economic effect on a substantial number of small entities, and briefly decribe the basis of the determination.

(2) The determination of effect on small entities is a determination separate from and in addition to the determination of significance. That is, a rule may or may not be determined to be "significant" and still have a significant economic effect on a substantial number of small entities. If a rule is determined to have such an effect, the bureau developing or amending the rule will prepare small entity flexibility analyses for the rule (see § 14.9 *Content of small entity flexibility analyses*) in addition to and in conjunction with meeting the requirements for the developing of significant rules (§ 14.6) or for the development of other rules (§ 14.7).

(3) The determination of effect on small entities should ordinarily be made at the same time as the determination of significance. (See §§ 14.4 and 14.7) In some cases, the need to collect additional information may necessitate postponement of the decision. In these cases, the determination of effect on small entities should be made no later than the beginning of the drafting of the proposed rule.

(c) *Approval.* The determination of whether or not a rule is significant, the decision on whether preparation of a regulatory analysis is required, and the determination of effect on small entities must be approved by the Secretarial Officer having jurisdiction over the program to which the rule relates. Secretarial Officers may delegate approval responsibility for particular types or classes of rules to bureau heads. Bureau heads may not redelegate this approval authority.

(d) *Discretionary use of procedures.* The Secretary or the Secretarial Officer having jurisdiction over the program to which a rule relates may require that:

(1) The rule be developed as a significant rule or a regulatory analysis be prepared, or both, even though the rule does not meet the criteria for significance or preparation of a regulatory analysis, or

(2) A small entity flexibility analysis be prepared for the rule even though the rule does not have a significant economic effect on a substantial number of small entities.

(e) *Exceptions.* (1) In certain circumstances the procedures for development of significant rules and preparation of regulatory analyses may be waived. (See paragraph (c) under §14.4 *Determination of significance and need for regulatory analysis*)

(2) In certain limited circumstances, the preparation of small entity flexibility analyses may be waived or delayed. (See paragraph (d) under §14.5 (*Determination of effects on small entities*)

(f) *Statements in* **Federal Register.** (1) All final and proposed rulemaking documents and notices of intent to proposed rules published in the **Federal Register** will state in the Supplementary Information Section: (i) Whether or not the rule is a significant rule. If the rule is significant, the document will state (A) why the rule is significant and (B) whether or not a regulatory analysis is required; and

(ii) Whether or not the rule will have a significant economic effect on a substantial number of small entities.

(A) If the rule will not have a significant economic effect on a substantial number of small entities the Supplementary Information section will contain a certification that this is the case and will include a statement explaining the basis for the certification.

(B) If a small entity flexibility analysis is required, the initial analysis or a summary will be published with the proposed rule in the **Federal Register.** In those instances where a summary only is published, a statement describing where copies may be obtained will also be included. A statement describing where copies of a final small entity flexibility analysis may be obtained will be published with the final rule.

(2) If the decision on the need for a regulatory analysis or on whether the rule will have a significant economic effect on a substantial number of small entities has not been made at the time of a notice of intent to propose the rule, the notice of intent will invite comments on the need for a regulatory analysis and on effects of the rule on small entities.◄

§ 14.4 Determination of significance and need for regulatory analysis.

(a) *Criteria for significance.* A rule is "significant" if it falls within one or more of the following categories:

(1) Rules which have a significant and nation or regionwide impact on state or local governments. Factors to be considered in determining whether the impact of a rule will be significant include its effect on: (i) Interstate relations; (ii) relations between state and local governments; (iii) internal organization of state and local governments; (iv) personnel practices of state and local governments; (v) planning and fiscal activities of state and local governments; (vi) the role and functions of heads of state and local governments; and (vii) eligibility criteria for Federal financial assistance.

►(2) Rules which will result in significant new information collection or recordkeeping requirements that will affect individuals, businesses, organizations, or state or local governments. Factors that determine whether information collection or recordkeeping requirements are significant are those which: (i) will have a national or regionwide economic impact, or substantial effect on state or local governments or small entities; (ii) will result in the commitment of resources and/or federal funds exceeding $250,000; (iii) require a respondent to spend more than one-hour to respond to each information requirement; (iv) impose a total annual reporting burden on the public exceeding 100,000 hours; or (v) require more than 200,000 persons to respond or maintain specific records.◄

(3) Rules which both involve a potential conflict between environmental and other considerations and constitute a major Federal action for which an environmental impact statement is required by section 102(2)(c) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332(2)(c))

(4) Rules which have a major impact on other programs of the Department, other Federal agencies or the allocation of Federal funds.

(5) Rules which are likely to have a substantial economic effect on the entire economy or on an individual region, industry or level of government.

(b) *Criteria for regulatory analysis.* (1) A regulatory analysis of the economic consequences of a rule will be prepared if the rule is within category (5) of the criteria for significance and (i) the rule will have an annual economic effect of $100 million or more or (ii) even though the economic effect of the rule will be less than $100 million, the potential economic effect of the rule on the economy or an individual region, industry or level of government is sufficiently major as to require formal analysis to assure that the objectives of the rule are achieved with minimum burden.

(2)(i) In determining whether a regulatory analysis should be prepared for rules which will have an economic effect of less than $100 million, close attention should be given to such factors as: (A) The present average level of real income of the region which may be affected and the potential change in average income for the region as a result of the rules; (B) the present cost of doing business of an industry and the potential effect of the rules on the cost; (C) the present cost of operating a level of government or a particular governmental program and the potential effect of the rules on that cost; and (D) the estimated likelihood that the acceptable alternative which would impose the minimum economic burden would not be clearly chosen without formal regulatory analysis.

(ii) No specific quantitative levels or percentages are established for examining rules which will have an economic effect of less than $100 million, because the relative effect of such rules may be minor for some regions, industries, or levels of government, but major or critical for others. Thus each case needs to be examined individually. For example, a particular method of regulation might cause a very small increase in the cost of doing business for an industry. If, however, there are a number of firms in that industry which are marginal, a small increase in costs could drive these firms out of business. In such a case, a regulatory analysis should be prepared if the least burdensome method of regulation is not obvious without formal analysis.

(3)(i) "Economic effects" means changes in the use of resources which, in principle, would affect national income and which can be valued in dollar terms. For purposes of determining the necessity for regulatory analysis, economic effects do not include measures of consumers' willingness to pay in cases when monetary values would have to be imputed. If a regulatory analysis is determined to be necessary, however, measurement of consumers' willingness to pay which would have to be imputed, would be measured or estimated when such datum was of significance to the regulatory decision at hand, and such measurement was practical.

(ii) A "region" is a geographic area ordinarily covering more than one state, although for some rules a narrower interpretation may be appropriate. For example, a particular proposed rule might affect only one state, but the area affected could be as large or the impact as great, as other rules significantly affecting a region comprising more than one state. Under such a circumstance, the same consideration for determining the need for regulatory analysis should be given as if the region comprised more than one state.

(iii) An "industry" is defined to correspond to a 4-digit industry within the Standard Industrial Classification

System established by the Office of Management and Budget (OMB, *Standard Industrial Classification Manual* (1972)).

(c) *Exceptions.* The Secretary or the Secretarial Officer having jurisdiction over the program to which a rule relates may except from the procedures for development of significant rules and preparation of regulatory analyses rules (1) issued in response to an emergency or which are governed by short-term statutory or judicial deadlines, or (2) which related to Federal Government procurement. The Supplementary Information section of **Federal Register** documents for rules for which such exceptions are made will contain an explanation of why it is impractical or contrary to the public interest for the Department to follow the procedures for development of significant rules.

►§14.5 Determination of effects on small entities.

(a) *Definitions.* (1) "Small business" means any business which is independently owned and operated and which is not dominant in its field of operation. In making specific determinations about the effects of rules on small businesses, bureaus should consider the standards and criteria contained in the Small Business Administration rules appearing in 13 CFR Part 121. For rules promulgated under the authority of the Surface Mining Control and Reclamamtion Act of 1977 (30 U.S.C. 1201 *et seq.)* a coal operator is a small business if its total annual producition of coal from surface and underground mining operations does not exceed one hundred thousand tons (30 U.S.C. 1252(c)).

(2) "Small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

(3) "Small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.

(4)"Small entity" means "small business", "small organiztion" and "small governmental jurisdiction."

(b) *Criteria for determining effects on small entities.* (1) "Significant economic effect" includes a wide variety of quantifiable as well as non-quantifiable aspects. For example, every small entity does not have to be affected significantly for the total effect to be significant, costs which are not easily quantifiable must be considered, and both the marginal and cumulative effects should be estimated whenever possible.

(2) "Substantial number" means a substantial number of entities within one, or a combination, of the three subgroups, small businesses, small organizations, or small governmental jurisdictions. Whether a substantial number are affected must be determined under the circumstances of each rule, but it is not necessary for an overwhelming precentage of potential entities in a subgroup, or combination of subgroups, to be affected for the rule under development to meet the "substantial number" test. In addition, though a rule may not affect a substantial number of small entities overall, it may affect a substantial number within an industry or sector. Such a rule will, therefore, affect a substantial number of small entities.

(3) In determining whether a rule will have a significant economic effect on a substantial number of small entities, the Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may consider the following:

(i) Demographic effects (firms affected per industry, industries affected, anticipated closings, geographic distribution);

(ii) Direct costs by size of affected entities, both total and per unit of output (operating costs, capital costs, administrative costs);

(iii) Indirect costs;

(iv) Non-quantifiable effects;

(v) Enforcement costs (Federal, state, local);

(vi) Competitive effects (concentration, mergers, entry, exports-imports);

(vii) Aggregate effects (employment, output, price levels, growth rates).

(c) *Certification of no significant economic effect.* (1) The Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may certify that the rule will not, if promulgated, have a significant economic effect on a substantial number of small entities. (2) If the rule will not have a significant economic effect on a substantial number of small entities, the Supplementary Information section of all final and proposed rulemaking documents and notices of intent to propose rules in the **Federal Register** will contain a certification that this is the case and will include a statement explaining the basis for the certification.

(d) *Waiver or delay.* (1) The Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may waive or delay the completion of some or all of the requirements for the preparation of an initial small entity flexibility analysis by publishing in the **Federal Register** a written finding that the rule is being promulgated in final form in response to an emergency that makes compliance or timely compliance with the requirements of an initial small entity flexibility analysis impracticable. The finding will be published no later than the date of publication of the final rule, and will contain the reasons for the finding.

(2) The Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may delay the completion of a final small entity flexibility analysis by publishing in the **Federal Register** a written finding that the rule is being promulgated in final form in response to an emergency that makes timely compliance with the requirements of a final small entity flexibility analysis impracticable. The finding will be published no later than the date of publication of the final rule, and will contain the reasons for the finding.

(3) If the bureau has not prepared a required final small entity flexibility analysis within 180 days of publication of the final rules, the rule will lapse and have no effect. The rule will not be repromulgated until a final small entity flexibility analysis has been completed by the bureau.◄

§ 14.6 Development of significant rules.

(a) *Scope.* This section outlines the procedures for developing significant rules, including procedures to involve the public in the development process.

(b) *Work Plan.* (1) When a rule has been determined to be significant, the lead official will promptly prepare a work plan for review and approval by the Secretary.

(2) The work plan will state the need for development of the rule, the principal issues and alternative approaches to be considered, a tentative plan for public involvement, and target dates for completion of steps in its development. The plan will also state whether or not a regulatory analysis will be prepared or, if this determination has not been made, the process by which the determination will be made. ►If appropriate, the plan will include tentative dates for completion of initial and final small entity flexibility analyses and specific actions planned to include and accommodate interested small entities in the development of the rule.◄

(3) The plan will be submitted to the Secretary through the Secretarial Officer having jurisdiction over the program to which the rule relates and the Assistant Secretary—Policy, Budget and Administration. The Assistant Secretar—Policy, Budget and Administration must review and

approve the decision on whether a regulatory analysis is necessary during the review of the work plan.

(4) After review of the plan, the Secretary will approve or disapprove the plan. The Secretary's approval may be conditioned on modifications in the plan.

(5) When the Secretary approves a work plan, he will indicate whether he wishes to approve the rule before it is published in the **Federal Register** as a proposed and final rule or whether the approval authority may be exercised by the Secretarial Officer having jurisdiction over the program to which the rule relates.

(c) *Early public involvement.* (1) Before a proposed significant rule is drafted, a notice of intent to propose rulemaking will be published in the **Federal Register.** The notice of intent may be omitted, however, if time constraints require immediate preparation of a proposed rule or if there has been a recent previous opportunity for comment by the general public on the issues to be addressed in the proposed rule.

(2) A notice of intent will state the need for, the subject matter of and key issues presented by the anticipated rulemaking, and will advise the public where additional information may be obtained and where comments should be sent. If a regulatory analysis ►or a small entity flexibility analysis is to be prepared,◄ the notice should invite comment of the economic consequences of alternative regulatory approaches ►and suggestions for minimizing the economic effects on small entities.◄ If no decision on a regulatory analysis ►or a small entity flexibility analysis has◄ been made, the notice of intent should invite comment on whether the potential economic consequences of the rule require preparation of a regulatory analysis ►or a small entity flexibility analysis.◄

(3) When a notice of intent to propose rulemaking is to be published, consideration will be given to taking additional actions to assure meaningful public participation in the rulemaking process. These additional actions may include, but are not limited to: (i) Holding open conferences or public hearings; (ii) sending press releases to newspapers of general circulation and other publications likely to be read by those affected; (iii) directly notifying interested parties, including state and local governments ►and small entities;◄ and (iv) taking out paid advertisements in publications likely to be read by those affected. If the rule may have a significant economic effect on a substantial number of small entities, special care will be taken to involve and accommodate interested small entities. For example, procedures for soliciting public comment on a rule may be adopted or modified to reduce the cost or complexity of participation in the rulemaking by small entities.

(d) *Regulatory analysis.* (1) If a regulatory analysis is required, the draft regulatory analysis will ordinarily be prepared after the receipt of public comments in response to the notice of intent to propose rulemaking (if one is published), but before or during the process of drafting the proposed rule. The final regulatory analysis will be prepared after the comment period of the proposed rules and draft regulatory analysis. The lead official will be responsible for assuring that the preparation of the draft and final regulatory analyses is integrated with the preparation of the proposed and final rules.

►(2) If appropriate and desirable, the draft and final regulatory analyses may also include information and analysis necessary to fulfill requirements to conduct initial and final small entity flexibility analyses. If the regulatory analysis and small entity flexibility analyses are combined, the document will clearly state that such a procedure is being followed.◄

(e) *Preparation of proposed and final significant rules.* (1) In supervising the preparation of proposed and final rules, the lead official is responsible for assuring at a minimum that: (i) The direct and indirect effects of the rule are adequately considered; (ii) alternative approaches are considered and the least burdensome of acceptable alternatives is chosen; (iii) public comments are considered and the final rulemaking document states the reason for accepting or rejecting these comments or groups of comments; (iv) the rule is written in clear English and will be understandable to those who must comply with it; and (v) new ►information collection◄ or recordkeeping requirements which may result from the rule are considered and conform to the requirements of the Federal Reports Act.

(2) When the final rule is prepared, the lead official is also responsible for developing a plan for evaluating the rule after its issuance. The plan should take into account the review cycle for review of rules in § 14.11.

(f) *Approval of proposed significant rules.* Notices of proposed significant rulemaking will be approved by the Secretary, or if the Secretary has so authorized, by the Secretarial Officer having jurisdiction over the program to which the rule relates. Prior to submission for approval, notices of proposed rulemaking will be reviewed by the Assistant Secretary—Policy, Budget and Administration and the Solicitor.

(g) *Publication of proposed significant rules.* (1) The public will be given a minimum of 60 calendar days after the date of publication in the **Federal Register** to comment on proposed significant rules. A shorter period may be used only in special cases requiring more timely action. In such cases, the notice of proposed rulemaking will contain a statement of the reason for the shorter period.

(2) A notice of proposed rulemaking will contain a statement of the alternative approaches considered in drafting the proposed rule and explanation of the basis for selection of the alternative incorporated in the proposal. (i) If a draft regulatory analysis has been prepared, the notice of proposed rulemaking will state how copies may be obtained and will ask for comments on the analysis. ►(ii) If an initial small entity flexibility analysis was prepared, the initial analysis or summary will be published in the **Federal Register** and will ask for comments on the analysis. If a summary only is published, a statement describing where copies may be obtained will also be included.◄

(3) To assure meaningful public comment on a proposed rule, consideration will be given to supplementing the **Federal Register** notice by taking additional actions. These additional actions may include, but are not limited to: (i) Open conferences and public hearings; (ii) sending press releases to newspapers of general circulation and other publications likely to be read by those affected; (iii) directly notifying interested parties, including state and local governments ►and small entities◄ and (iv) taking out paid advertisements in publications likely to be read by those affected. ►If the rule may have a significant economic effect on a substantial number of small entities, special care will be taken to involve and accommodate interested small entities. For example, procedures for soliciting public comment on a rule may be adopted or modified to reduce the cost or complexity of participation in the rulemaking by small entities.◄

(h) *Approval of final significant rules.* (1) Final significant rules will be approved by the Secretary or, if the Secretary has so authorized, by the Secretarial Officer having jurisdiction over the program to which the rule relates. Prior to submission for this approval, final rules will be reviewed by

the Assistant Secretary—Policy, Budget, and Administration and the Solicitor.

(2) Before approving a final significant rule, the Secretary or Secretarial Officer should determine that: (i) The rule is needed; (ii) the direct and indirect effects of the rule have been adequately considered; (iii) alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen; (iv) public comments have been considered and an adequate discussion of the comments is contained in the rulemaking document; (v) the rule is written in clear English and can be understood by those who must comply with it; (vi) an estimate has been made of the new ►information collection◄ or recordkeeping requirements necessary for compliance with the rule; (vii) the name, address and telephone number of a knowledgeable agency official is included in the document; (viii) the name of the principal author of the rule is included in the document; (ix) a plan has been developed for evaluating the rule after its issuance; and (x) the final regulatory analysis, ►or final small entity flexibility analysis,◄ if one has been prepared, adequately considers the economic consequences of the final rule.

(3) To assist the Secretary or Secretarial Officer in reviewing final significant rules, each rule must be accompanied by a memorandum: (i) Addressing each of the items listed above; (ii) analyzing the views of public, citizens groups, user groups and elected officials; and (iii) summarizing the anticipated impact of the rule. A copy of the regulatory analysis ►or final small entity flexibility analysis◄ will be attached to this memorandum.

(i) *Publication of final significant rules.* (1) The Supplementary Information section of a rulemaking document must contain a concise statement of the basis and purpose of the rule and must also discuss the reasons for accepting or rejecting all relevant and significant comments or groups of comments on the proposed rule.

(2) The rulemaking document must include a clear statement of the date on which the rule will take effect. This date will be a minimum of 30 calendar days after the date of publication in the **Federal Register** unless (i) the rule grants or recognizes an exemption or relieves a restriction or (ii) other good cause for a shorter delay of the effective date exists. If a rule is to become effective less than 30 days from the date of publication, the reason for the earlier date will be explained in the Supplementary Information Section.

(3) If a final regulatory analysis ►or a final small entity flexibility analysis◄ was prepared, the document will state where copies may be obtained.

§ 14.7 Development of other rules.

(a) *Scope.* Although a rule does not meet the criteria for significance, public participation in its development will often be helpful, ►especially when the rule may have a significant economic effect on a substantial number of small entities.◄ This section contains supplementary Department of the Interior policies for public participation in the development of rules not meeting the criteria for significance.

(b) *Legislative Rules.* (1) *Definition.* "Legislative Rules" are rules, other than rules of agency organization, procedure or practice, which are issued under statutory authority and which implement the statute.

(2) *Notice of intent to propose rules.* (i) If proposed legislative rules are likely to be complex or controversial or to reflect major changes in existing rules, an opportunity for public comment before the publication of a notice of proposed rulemaking may be helpful in drafting the proposed rules. Before drafting such proposed legislative rules, the lead official should consider whether publication in the **Federal Register** of a notice of intent to propose rulemaking will be beneficial in the drafting process.

(ii) A notice of intent will state the need for the rule, the subject matter of and the key issues presented by the anticipated rulemaking, and will advise the public where additional information may be obtained and where comments may be sent.

(3) *Proposed rulemaking.* (i) *Administrative Procedure Act Requirement.* Section 4 of the Administrative Procedure Act, requires that the public be allowed an opportunity to comment on proposed legislative rules before final adoption. (5 U.S.C. 553) This requirement for comment does not apply to rules which deal with public property, loans, grants, benefits or contracts. (5 U.S.C. 553(a)) Further, the requirement for comment, if otherwise applicable, may be waived if it is found, for good cause, that notice of and public comment on a proposed legislative rule are impracticable, unnecessary or contrary to the public interest. (5 U.S.C. 553(b)(B))

(ii) *Department policy.* (A) It is the policy of the Department not to invoke the exception to notice and comment procedures for legislative rules relating to public property, loans, grants, benefits or contracts. When legislative rules fall in these categories, an opportunity for comment will be given unless notice and comment are determined to be impracticable, unnecessary or contrary to the public interest.

(B) Dispensing with the publication of a notice of proposed legislative rulemaking on the ground that notice and an opportunity for comment are impracticable, unnecessary or contrary to the public interest is not favored and should occur only in special cases, such as emergencies or instances where a proposed amendment makes only minor technical changes in a rule.

(iii) *Statement of basis for omitting notice and comment.* When it is determined that a final legislative rule is to be adopted without prior publication of a notice of proposed rulemaking, a specific statement of the basis for the determination will be published with the rule.

(iv) *Period for comment.* No specific time period for comment is prescribed by the Administrative Procedure Act. Except where another statute requires a longer notice period, the public will be given a minimum of 30 calendar days to comment on legislative rules. A shorter period may be used only in special cases requiring more timely action. In such cases, the notice of proposed rulemaking will contain a statement of the reasons for the shorter period.

(4) *Assuring public participation.* When a notice of intent to propose a rule or a notice of proposed rulemaking is to be published, the lead official will consider taking additional actions to assure meaningful public participation in the rulemaking process. These additional actions may include, but are not limited to: (i) Holding open conferences or public hearings; (ii) sending press releases to newspapers of general circulation and other publications likely to be read by those affected; (iii) directly notifying interested parties, including state and local governments, ►and small entities;◄ and (iv) taking paid advertisements in publications likely to be read by those affected. ►If the rule may have a significant economic effect on a substantial number of small entities, special care will be taken to involve and accommodate interested small entities. For example, procedures for soliciting public comment on a rule may be adopted or modified to reduce the cost or complexity of participation in the rulemaking by small entities.◄

(5) *Final rulemaking documents.* (i) The Supplementary Information section of the rulemaking document for all final legislative rules must contain a concise statement of the basis and purpose for the rule and must also discuss all

relevant and significant comments on the proposed rule.

(ii) The rulemaking document must include a clear statement of the date on which the rule is to take effect. This date will be a minimum of 30 calendar days after the date of publication in the Federal Register unless: (A) The rule grants or recognizes an exemption or relieves a restriction or (B) other good cause for a shorter delay of the effective date exists. If a rule is to become effective less than 30 days from the date of publication, the reason for the earlier date will be explained in the Supplementary Information section.

(c) *Interpretative rules and general statements of policy.* (1) *Definitions.* (i) "Interpretative rules" are rules issued by the Department to advise the public of the Departments interpretation of the statutes and rules which it administers.

(ii) "General Statements of Policy" are statements issued by the Department to advise the public prospectively of the manner in which the Department proposes to administer a discretionary power.

(2) *Public participation.* The Administrative Procedure Act does not require public participation in the development of interpretative rules and general statements of policy. The lead official should, however, consider whether public participation in the development process will be beneficial. Factors which should be considered in making this decision include the impact of the rule or policy on the public or on state and local governments; the complexity and pervasiveness of the rule or policy; the degree to which the rule or policy will modify existing interpretations or policies; the confusion or controversy likely to be caused by practical difficulties of compliance with a new rule or policy; ►and the likely effect on small entities.◄

(3) *Procedures for public participation.* When it is determined that there should be an opportunity for public participation in the development of an interpretative rule or general statement of policy, the notice and comment rulemaking procedures of 5 U.S.C. 553 (b) and (c) and the procedures for development of legislative rules in § 14.7(b)(3)(iv) and § 14.7(b)(4) will be used.

(4) *Effective Date.* Final interpretative rules and general statements of policy may be made effective on the date of publication in the Federal Register. Except in emergency situations, consideration should, however, be given to delaying the effective date for 30 calendar days from the date of publication if (i) the adoption of the rule or statement was not preceded by an opportunity for comment or (ii) the rule or statement substantially modifies an earlier interpretation or policy on which members of the public or state or local governments have relied.

(5) *Codification.* Interpretative rules and general statements of policy should be codified in the Code of Federal Regulations if they have a substantial impact on, or are of continuing interest to, the public, state or local governments ►or small entities.◄

(d) *Rules of Agency organization, procedure and practice.* (1) *Definition.* "Rules of organization, procedure and practice" are: (i) descriptions of the Department's central and field organization and the method by which the public may obtain information, make submittals or requests, or obtain decisions; (ii) statements of the general course and method by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; and (iii) rules of procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations.

(2) *Public participation.* The Administrative Procedure Act does not require public participation in the development of rules of agency organization, procedure and practice. The lead official should, however, consider whether initial publication of a proposed rule in the Federal Register will contribute to the process of developing the rule, ►and in determining what effect the rule will have on small entities.◄

(3) *Procedures for Public Participation.* When it is determined that there should be an opportunity for public comment on a proposed rule of organization, procedure or practice, the notice and comment rulemaking procedures of 5 U.S.C. 553 (b) and (c) and the procedures for development of legislative rules in § 14.7(b)(3)(iv) and § 14.7(b)(4) will be used.

(4) *Effective Date.* Final rules of organization, procedure and practice may be made effective on the date of publication in the Federal Register. Except in emergency situations, consideration should, however, be given to delaying the effective date for 30 calendar days from the date of publication (i) if the adoption of the rule or statement was not preceded by an opportunity for comment or (ii) if the rule substantially modifies an earlier procedure or practice.

§ 14.8 Content of regulatory analyses.

A regulatory analysis prepared in accordance with § 14.4(b) (*Criteria for regulatory analysis*) will contain: (a) a succinct statement of the problem being addressed and objectives of the rule; (b) a description of the major alternative ways of achieving the objectives that were considered by the bureau; (c) an analysis of the economic consequences of each of the alternatives, and (d) a detailed explanation of the reasons for choosing one alternative over the others.

►§ 14.9 Content of small entity flexibility analyses.

(a) *Scope.* (1) This section outlines the content of small entity flexibility analyses for rules that have been determined to have a significant economic effect on a substantial number of small entities (§ 14.5).

(2) For the purpose of preparing an initial or final small entity flexibility analysis the bureau may also consider a series of closely related rules as one rule.

(b) *Initial small entity flexibility analysis.* (1) Each initial small entity flexibility analysis will contain:

(i) A description of the reasons why action by the bureau is being considered;

(ii) A succinct statement of the objectives of and legal basis for the rule;

(iii) A description of and where feasible, an estimate of the number of small entities affected by the rule;

(iv) A description of the projected information collection, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for preparation of the information and records; and

(v) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

(2) Each small entity flexibility analysis will also describe any significant alternatives to the rule which would accomplish the stated objectives of applicable statutes and minimize any significant economic effect of the rule on small entities. Alternatives available include but are not limited to:

(i) The establishment of differing compliance or information collection requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation or simplification of compliance or information collection requirements for small entities; (iii) the use of performance rather than design based standards; and (iv) an exemption

from coverage of the rule or any part of the rule for small entities.

(c) *Final small entity flexibility analysis.* Each final small entity flexibility analysis shall contain—

(1) A succinct statement of the need for and objectives of the rule;

(2) A summary of the issues raised by the public comments in response to the initial small entity flexibility analysis, a summary of the Department's assessment of such issues, and a statement of any changes made in the rule as a result of the public comments; and

(3) A description of each of the significant alternatives to the rules considered by the bureau which were consistent with the stated objectives of applicable statutes and designed to minimize the significant impact of the rule on small entities, and a statement of the reasons why each alternative was rejected.

(d) *Preparation of analysis.* In preparing an initial or final small entity flexibility analysis, the bureau may provide either a quantifiable or numerical description of the effects of the rule or alternatives to the rule or, if quantification is not practicable or reliable, more general descriptive statements.

(e) *Combination with regulatory analysis.* Initial or final small entity flexibility analyses may be prepared in conjunction with regulatory analyses for certain significant rules (see § 14.6 *Development of significant rules).* The document must clearly state that the two types of analyses are combined and it must satisfy all the content requirements for a regulatory analysis (see § 14.8) as well as the content requirements for a small entity flexibility analysis.◄

14.10 Petitions for rulemaking.

(a) *Scope.* This section prescribes procedures for the filing and consideration of petitions for rulemaking.

(b) *Filing of petitions.* Under the Administrative Procedure Act, any person may petition for the issuance, amendment, or repeal or a rule. (5 U.S.C. 553(e)) The petition will be addressed to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240. It will identify the rule requested to be repealed or provide the text of a proposed rule or amendment and include reasons in support of the petition.

(c) *Consideration of petitions.* The petition will be given prompt consideration and the petitioner will be notified promptly of action taken.

(d) *Publication of petitions.* A petition for rulemaking may be published in the **Federal Register** if the official responsible for acting on the petition determines that public comment may aid in consideration of the petition.

§ 14.11 Review of rules.

(a) *Scope.* This section establishes procedures for periodic review of existing rules to assure that they are needed, up-to-date and clear.

(b) *Responsibility.* Each bureau is responsible for reviewing existing rules which relate to programs which it administers. Secretarial Officers are responsible for assuring that bureau reviews are conducted and must approve the results of the reviews.

(c) *Review criteria.* In reviewing an existing rule, bureaus must consider: (1) The continued need for the rule; (2) the ►nature,◄ type and number of complaints or suggestions received concerning the rule; (3) whether the rule can be simplified or clarified; (4) the need to eliminate ►rules that overlap, duplicate or conflict with other Federal and, to the extent feasible, with state and local governmental rules;◄ (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the rule; (6) the recordkeeping and ►information collection requirements◄ which the rule imposes on the public; and (7) the need to eliminate sex-based criteria and gender-specific terminology.

(d) *Review cycle.* (1) Rules will be reviewed at no less than five year intervals. More frequent reviews or special reviews of selected rules may be established by a bureau, the Secretary, or a Secretarial Officer. ►(2) Rules scheduled for review will be listed in the semiannual agenda (§ 14.12), and reviews will be completed within one year of originally being scheduled. (3) If it is determined that more than one year is needed to complete the review of a rule that has a significant economic effect on a substantial number of small entities, then such a determination will be published in the **Federal Register.** The determination will be approved by the Secretarial Officer having jurisdiction over the program to which the rule relates and may extend the completion date by one year at a time for a total of not more than five years.◄

(e) *Revision of rules.* If review of a rule indicates a need for repeal or revision, the procedures for development of significant rules (§ 14.6) or for development of other rules (§ 14.7) will be used as appropriate.

§ 14.12 Semiannual agenda.

(a) *Scope.* This section contains procedures for the publication of a semiannual agenda of those rules selected for review and development during the subsequent six month period.

(b) *Publication and Content of Agendas.* (1) The Department will publish a semiannual agenda in ►April and October◄ of each year.

(2) The agendas: (i) Will list all new or existing significant rules planned for development or revision; and (ii) will list all rules scheduled for review under the five-year cycle.

►(3) The agenda will include: (i) A summary which states the nature of and need for each action; (ii) the legal basis for each action; (iii) a brief description of the subject area which is likely to effect small entities, if applicable; (iv) the name, telephone number and address of the knowledgeable official for each action; (v) whether or not a regulatory analysis is required; (vi) information regarding a small entity flexibility analysis, if applicable; (vii) the schedule for completing actions, if known; and (viii) the status of those rules previously listed.◄

(c) *Approval.* (1) Each bureau will submit its semiannual agenda to the Assistant Secretary—Policy, Budget and Administration through the Secretarial Officer having jurisdiction over the bureau.

(2) The Department's semiannual agenda must be approved by the Secretary prior to publication in the **Federal Register.**

►(d) To the extent possible, notice of the semiannual agenda with a request for comments will be provided to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities.◄

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Part VIII

Department of Energy

Economic Regulatory Administration

Electric and Gas Utilities Covered in 1981 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Titles II and VII of the National Energy Conservation Policy Act

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-79-43A]

Electric and Gas Utilities Covered in 1981 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Titles II and VII of the National Energy Conservation Policy Act

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) and section 211(b) of the National Energy Conservation Policy Act of 1978 (NECPA) require the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and III of PURPA and Titles II and VII of NECPA apply during such calendar year. The Notice containing the proposed list for 1981 was published in the Federal Register on October 10, 1980. The statutorily required final list is published here as two separate tabulations, Appendices A and B. Appendix A lists the covered utilities by State, and Appendix B lists them in alphabetical order. These two tabulations are referred to hereinafter as "the lists."

Written comments were requested on the accuracy of the lists. The Notice issued today sets forth the Department of Energy's response to each of the five comments received. The final lists have been modified to reflect these responses.

FOR FURTHER INFORMATION CONTACT:

Nancy E. Tate, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., (Room 4306), Washington, D.C. 20461, (202) 653-3920

William L. Webb, Office of Public Information, Economic Regulatory Administration, 2000 M Street, N.W., (Room B-110), Washington, D.C. 20461, (202) 653-4055

Arthur Perry Bruder, Office of General Counsel, Conservation and Solar Energy, Department of Energy, 1000 Independence Avenue, S.W., (Room 6B-144), Washington, D.C. 20585, (202) 252-9516

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*) and section 211(b) of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3206 *et seq.* (42 U.S.C. 8211 *et seq.*), the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1981. State regulatory authorities are required by the above cited sections of PURPA and NECPA to notify the Secretary of Energy as to their ratemaking authority over the listed utilities.

On October 10, 1980, DOE issued a Notice containing two proposed lists (Appendix A and B) of utilities to which PURPA and NECPA apply in 1981 and requesting each State regulatory authority to notify DOE in writing of each utility on the lists for which it has ratemaking authority (45 FR 67553, October 10, 1980). Appendix A separately identifies each State regulatory authority, the covered utilities it regulates, and other covered utilities in the State not regulated by the State regulatory authority. Appendix B lists the utilities alphabetically, subdivided into electric and gas utilities and by type of ownership. Public comments were requested on the accuracy of these two appendices.

In response, United Cities Gas (United) and the City of Lafayette, Louisiana Department of Utilities (Lafayette) each submitted a comment requesting deletion from the lists. Equitable Gas (Equitable) submitted a comment requesting deletion from the lists for a portion of its operations which is carried out in Kentucky. The City of El Paso (El Paso), and a group of three subsidiaries of Central and South West Corporation (Central and South West), filed comments pertaining to Appendix A's description of Texas' regulatory structure and responsibilities.

Following is a discussion of the comments, and of DOE's response to them.

II. Discussion of Comments and DOE Response

On September 24, 1979, DOE issued a Notice containing two lists of electric and as utilities to which PURPA and NECPA would apply in 1980. In response to that issuance, CP National (CP) submitted a comment requesting deletion from the lists. In support of the request, it pointed out that it operated geographically separate distribution systems, none of which alone exceeded the coverage thresholds for PURPA and NECPA. CP also cited DOE's earlier deletion of Citizens Utilities Company (Citizens) from the 1979 lists. After consideration of CP's request, and reconsideration of Citizen's situation, DOE determined, on June 11, 1980, that both Citizens and CP should be deleted from the lists. The basis for this decision was that both companies were comprised of divisions or systems which were not interconnected, nor operated on a coordinated basis, nor joined together for the purpose of rate filings. Thus, it was decided that each division or system was to be treated as an individual entity. Since none of these individual entities exceeded the PURPA and NECPA thresholds, it was decided that neither CP nor Citizens nor any division or system of either would be included on the lists.

These criteria were applied to the requests of United and Equitable for deletion from the lists for 1981. The following is a discussion of those requests, and DOE's decision on them.

A. *United Cities Gas Company.* United asserts that it is "a diversified natural gas distribution company" which serves thirteen "separate" gas distribution systems in six States (Georgia, Illinois, North Carolina, South Carolina, Tennessee and Virginia). United further asserts that it is not vertically integrated with regard to production, transmission, or distribution, does not operate a single interconnected system in any one geographical area, and purchases its natural gas from numerous suppliers. Finally, it contends that none of the individual systems alone exceeds the PURPA and NECPA 10 Bcf threshold.

In light of this information, DOE has determined that United meets the criteria which, as discussed above, have been established for deletion from the lists. The lists published here have been amended to reflect this determination.

B. *Equitable Gas Company.* Equitable indicates that it engages in the purchase, production, transmission, storage, distribution and sale of natural gas in the States of Pennsylvania, West Virginia and Kentucky. It further indicates that its Pennsylvania and West Virginia operations exceed the 10 Bcf threshold and are, therefore, properly included on the lists. However, it asserts that its Kentucky operation is "completely separate" from and not physically connected to its Pennsylvania and West Virginia operating divisions, and further asserts that the Kentucky operation has annual sales which are substantially below the 10 Bcf threshold. Given this situation, Equitable requests that its operation in Kentucky be deleted from the lists.

Applying the above discussed criteria, DOE has determined that Equitable's Kentucky operation should be deleted. The lists published here have been amended to reflect this determination.

C. *City of Lafayette Department of Utilities.* Lafayette's comment protested its inclusion on the lists, asserting that

its retail sales for 1978 were not in excess of the 750 million kWh NECPA threshold. This argument is moot because 1979, not 1978, is the relevant year for determining whether any company meets the subject threshold for coverage in 1981. Consequently, DOE has determined that Lafayette shall remain subject to both NECPA and PURPA, at least until such time as DOE receives evidence which indicates that Lafayette's 1979 sales were not in excess of 750 kWh.

D. *City of El Paso.* El Paso's comment includes two related suggestions:

(1) It would be appropriate to "refine" Appendix A's description of the Texas utility regulatory responsibilities;

(2) DOE should make "some special effort" to communicate with certain Texas governmental entities, to inform each of whether it is a "ratemaking authority" for purposes of determining whether it is required to carry out certain statutory responsibilities under PURPA.

Both of these questions stem from the fact that Texas has a unique utility regulatory structure. Under this structure, each individual municipality has original jurisdiction to fix electric and gas rates within its boundaries. The Texas Public Utility Commission (TPUC) is granted the right to conduct a *de novo* review of any municipality's decision concerning electric rates, upon any party's request. A municipality may, under the statute, surrender its authority over electric rates to the TPUC. The Texas Railroad Commission has appellate jurisdiction over the gas rate decisions of any municipality.

El Paso points out, first, that Appendix A fails, in its description of the Texas regulatory structure for electric rates (published at 45 FR 67559), to include a reference to the statutory surrender provision for electric rates. It further points out that the notes to Appendix A are incorrect when they state that municipalities' powers to regulate electric utilities are limited only to investor-owned utilities. DOE has determined that these contentions are correct. Therefore, the subject language has been revised to read as follows:

> The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations and services provided by an electric utility (whether privately owned or publicly owned) within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears, *de novo*, appeals from the decisions of such municipalities.

As to El Paso's second request, that DOE inform Texas municipalities as to whether or not each is a "ratemaking authority" for purposes of having responsibilities under PURPA, DOE has determined that such an effort is neither necessary nor practicable. For one thing, such a notification procedure exceeds DOE's statutory obligations. Secondly, the Texas Municipal League is carrying out this effort, and the League is more familiar than DOE with the subject entities. Therefore, DOE is denying El Paso's second request.

E. *Central and South West Corporation.* As noted above, the State of Texas has a unique utility regulatory structure under which each individual municipality is empowered to fix electric rates within its boundaries. If a rate determination of any such municipality is appealed, the appeal is heard *de novo* by the TPUC.

PURPA mandates that decisions as to whether or not to adopt each of the various PURPA ratemaking standards are to be made by the "State regulatory authority". Since that term is defined as "* * * any State agency that has ratemaking authority," it would appear that, in Texas, these decisions must be made by each of the individual municipalities, since each has the power to make rates.

Central and South West asserts, however, that under Texas law, the TPUC is the "State regulatory authority" and that the TPUC, rather than the individual municipalities, should therefore make the decisions concerning adoption or rejection of each PURPA standard.

In support of this assertion, Central and South West points to three particular sections of Texas law on utility regulation:

(1) A section which requires that municipalities regulate utilities via "standards and rules" that are "the same as", or "not inconsistent with", standards which the TPUC sets for ratemaking (The Public Utility Regulatory Act, TEX. REV. CIV. STAT. ANN., art. 1446c, section 22);

(2) A section which mandates that "* * * all rules and regulations promulgated by (municipalities in regard to their regulation of utilities) * * * shall remain in effect (only) until * * * (t)he (TPUC) * * * promulgates provisions applicable to the exercise of the (TPUC's) * * * jurisdiction over public utilities"—(*Ibid*, section 90);

(3) A provision which mandates, as mentioned above, that any appeal from any municipality's ratemaking order shall be heard *de novo* by the TPUC (id. section 526).

Thus, Central and South West argues, the Texas municipalities have no power to make any "standards," and have, in effect, only "limited" ratemaking authority because they cannot set ratemaking standards and are, in any event, subject to being overruled by a PUC which hears appeals *de novo*.

DOE does not find these arguments persuasive. Even conceding that the TPUC has significant power to set the "standards" under which the municipalities determine rates, and although the PUC may have sweeping power to review those determinations, the fact remains that the municipalities, not the PUC, have original ratemaking power. For this reason, DOE has determined that the individual municipalities, and not the TPUC, are the "State regulatory authorities." Thus, each individual municipality must make a set of individual determinations as to adoption or rejection of each of the PURPA standards (unless it has surrendered its ratemaking authority to the TPUC).

III. List of Electric Utilities and Gas Utilities

The lists of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1981 are the lists which were published with the October 10, 1980 Notice, except that United, and Equitable's Kentucky operation are deleted and the description of the regulation structure of the State of Texas is to some degree revised. These lists are for 1981 only. The determinations set forth in this Notice may be modified with respect to later lists.

It should be noted that the inclusion or exclusion of any utility on or from the lists does not affect the legal obligations of such utility or the responsible State regulatory authority under PURPA and NECPA.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.* (42 U.S.C. 8211 *et seq.*))

Issued in Washington, D.C. on December 19, 1980.

Howard Perry,

Acting Assistant Administrator for Utility Systems.

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978 or 1979 and are covered by PURPA Title III and NECPA Titles II and VII. Utilities marked (*) do not have residential or commercial sales, and therefore, are not covered by NECPA Titles II and VII.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976, 1977, 1978 or

1979. All, except those marked (*), are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) either do not exceed the NECPA threshold of 750 million kilowatt-hours in 1979, for purposes other than resale, or do not have residential or commercial sales, and therefore, are not covered by NECPA Titles II and VII.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
Alabama Gas Corporation
Mobile Gas Service Corporation

Electric Utilities

Investor-Owned:
Alabama Power Company:

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Publicly-Owned:
Decatur Electric Department
*Dothan Electric Department
*Florence Electricity Department
Huntsville Electric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned:
Alaska Gas and Service Company

Electric Utilities

Rural Electric Cooperatives:
Chugach Electric Association
Publicly-Owned:
*Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:
Arizona Public Service Company
Southern Union Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Arizona Public Service Company
Tuscon Electric Power Company

The following covered utility within the State of Arizona is not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned:
Salt River Project Agricultural Improvement and Power District

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Arkansas Western Gas Company
Associated Natural Gas Company

Electric Utilities

Investor-Owned:
Arkansas-Missouri Power Company
Arkansas Power and Light Company
Empire District Electric Company
Oklahoma Gas and Electric company
Southwestern Electric and Power Company
Rural Electric Cooperatives:
*First Electric Cooperative Corporation

The following covered utility within the State of Arkansas in not regulated by the Arkansas Public Service Commission:
Publicly-Owned:
*North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

Gas Utilities

Investor-Owned:
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company

The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Anaheim Electric Division
Burbank Public Service Department
*Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
*Turlock Irrigation District
Vernon Municipal Light Department

Gas Utilities

Publicly-Owned:
Long Beach Gas Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:
Greeley Gas Company
Iowa Electric Light and Power Company
Kansas-Nebraska Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)

Electric Utilities

Investor-Owned:
Central Telephone and Utilities Corporation
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned:
Colorado Springs Department of Public Utilities (within city limits)

Electric Utilities

Publicly-Owned:
Colorado Springs Department of Public Utilities (within city limits)

State: Connecticut

Regulatory Authority: Connecticut Division of Public Utility Control.

Gas Utilities

Investor-Owned:
Connecticut Light and Power Company
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company

Electric Utilities

Investor-Owned:
Connecticut Light and Power Company
Hartford Electric Light Company
United Illuminating Company

State: Delaware

Regulatory Authority: Delaware Public Service Commission.

Gas Utilities

Investor-Owned:
Delmarva Power and Light Company

Electric Utilities

Investor-Owned:
Delmarva Power and Light Company

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia.

Gas Utilities

Investor-Owned:
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:
City Gas Company of Florida
Peoples Gas System

Electric Utilities

Investor-Owned:

Florida Power Corporation
Florida Power and Light Company
Gulf Power Company
Tampa Electric Company
Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
*Gainesville Regional Utilities
Jacksonville Electric Authority
Lakeland Department of Electricity and Water
Orlando Utilities Commission
Tallahassee, City of
Rural Electric Cooperatives: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
Clay Electric Cooperative
Lee County Electric Cooperative
*Withlachoochee River Electric Cooperative

State: Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:
Atlanta Gas Light Company
Chattanooga Gas Company
Gas Light Company of Columbus

Electric Utilities

Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company

The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission:

Electric Utilities

Publicly-Owned:
*Albany Water, Gas & Light Commission
Rural Electric Cooperatives:
*Flint Electrical Membership Corporation
*Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation

State: Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Hawaiian Electric Company, Inc.

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission.

Gas Utilities

Investor-Owned:
Intermountain Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Panhandle Eastern Pipeline Company
Peoples Gas, Light and Coke Company

Electric Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned:
Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Public Service Commission.

Gas Utilities

Investor-Owned:
Indiana Gas Company
Kokomo Gas and Fuel Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Terre Haute Gas Corporation
Public-Owned:
Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:
Indiana and Michigan Electric Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
Public Service Company of Indiana
Southern Indiana Gas and Electric Company
Publicly-Owned:
*Richmond Power and Light

State: Iowa

Regulatory Authority: Iowa Commerce Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Minnesota Gas Company
North Central Public Service Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Union Electric Company
Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—
*Muscatine Power and Water
Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission.

Gas Utilities

Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Northern Natural Gas Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Union Gas System Inc.

Electric Utilities

Investor-Owned:
*Central Kansas Power Company
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Light Company
Southwestern Public Service Company
Western Power Division Central Telephone and Utilities Corporation

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Public-Owned:
Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Energy Regulatory Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Inland Gas Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission:

*Owensboro Municipal Utilities
*Pennyrile Rural Electric Cooperative Corporation
*Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (jurisdiction only outside of the Parish of Orleans)
Southwestern Electric Power Company

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Gas Utilities

Investor-Owned:
New Orleans Public Service, Inc.

Electric Utilities

Investor-Owned:
New Orleans Public Service, Inc.
Louisiana Power and Light Company (within the Parish of Orleans)
Publicly-Owned:
Lafayette Utilities System
Rural Electric Cooperatives:
Southwest Louisiana Electric Membership Corporation

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Bangor Hydro-Electric Company
Central Maine Power Company
Public Service Company of New Hampshire

State: Maryland

Regulatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Delmarva Power and Light Company of Maryland
Potomac Edison Company
Potomac Electric Power Company
Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities.

Gas Utilities

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Commonwealth Gas Company
Lowell Gas Company
New Bedford Gas and Edison Light Company

Electric Utilities

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Eastern Edison Company
Massachusetts Electric Company
New Bedford Gas and Edison Light Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
*Lake Superior District Power Company
*Michigan Power Company
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilites within the State of Michigan are not regulated by the Michigan Public Service Commission:

Electric Utilites

Publicly-Owned:
Lansing Board of Water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned:
Greeley Gas Company
Inter City Gas Limited
Interstate Power Company
Iowa Electric Light and Power Company
Minnesota Gas Company
Montana-Dakota Utilities Company
North Central Public Service Company
Northern States Power Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company

The following covered utility within the State of Minnesota is not regulated by the Minnesota Public Service Commission:

Electric Utilities

Rural Electric Cooperatives:
*Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:
Entex, Inc.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission:

Electric Utilities

Rural Electric Cooperatives:
*4-County Electric Power Association
*Singing River Electric Power Association
*Southern Pine Electric Power Association

State: Missouri

Regulatory Authority: Missouri Public Service Commission.

Gas Utilities

Investor-Owned:
Associated Natural Gas Comapny
Gas Service Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Arkansas-Missouri Power Company
Empire District Electric Company
Kansas City Power and Light Company
Missouri Edison Company
Missouri Power and Light Company
Missouri Public Service Company
Missouri Utilities Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by the Missouri Public Service Commission:

Gas Utilities

Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
Springfield City Utilities

Electric Utilities

Publicly-Owned:
*Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company.

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority: Nebraska Public Service Commission.

The Commission does not regulate the rates and services of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission:

Electric Utilities

Publicly-Owned
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

Gas Utilities

Investor-Owned:
Gas Service Company
Iowa Electric Light and Power Company
Iowa Public Service Company
Kansas-Nebraska Natural Gas Company
Minnesota Gas Company
Northern Natural Gas Company
Northwestern Public Service Company
Peoples Natural Gas Company, Division of Internorth, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:
Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:
Southwest Gas Corporation

Electric Utilities

Investor-Owned
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

State: New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Public Service Company of New Hampshire

State: New Jersey

Regulatory Authority: New Jersey Department of Energy, Board of Public Utilities.

Gas Utilities

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Gas Company of New Mexico

Electric Utilities

Investor-Owned:
Community Public Service Company
El Paso Electric Company
*New Mexico Electric Service Company
Public Service Company of New Mexico
Southwestern Public Service Company

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:
Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned:
*Power Authority of New York

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly-Owned:
Fayetteville Public Works Commission
*Greenville Utilities Commission
*Rocky Mount Public Utilities
*Wilson Utilities Department

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned:
*Cleveland Division of Light and Power
Rural Electric Cooperatives:
*South Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company

The following covered utility within the State of Oklahoma is not regulated by the Oklahoma Corporation Commission.

Gas Utilities

Investor-Owned:
Cities Service Gas Company

State: Oregon

Regulatory Authority: Public Utility Commissioner of Oregon.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commissioner of Oregon:

Electric Utilities

Publicly-Owned:
Central Lincoln People's Utility District
*Clatskanie People's Utility District
Eugene Water and Electric Board
*Springfield Utilities Board
Rural Electric Cooperatives:
*Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T. W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
*UGI—Luzerne Electric Division
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Publicly-Owned:
Philadelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

Gas Utilities

None.

Electric Utilities

None.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned:
Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned:
Providence Gas Company

Electric Utilities

Investor-Owned:
Blackstone Valley Electric Company
Narragansett Electric Company

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:
*Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Caroina Electric and Gas Company

The following covered utility within the State of South Carolina is not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned:
South Carolina Public Service Authority

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:
Iowa Public Service Company
Minnesota Gas Company
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
*Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities

Publicly-Owned:
Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light Company
Kentucky Utilities Company
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

Electric Utilties

Publicly-Owned:
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
*Greeneville Light and Power System
*Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis Light, Gas and Water Division
*Nashville Electric Service
Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennnessee Electric Membership Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

Gas Utilities

Publicly-Owned:
Memphis Light, Gas and Water Division

State: Tennessee

Regulatory Authority: Tennessee Valley Authority.

Gas Utilities

None.

Electric Utilities

Publicly-Owned:
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
Decatur Electric Department
*Florence Electricity Department
*Greeneville Light and Power System
Huntsville Electric System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis, Light, Gas and Water Division
Nashville Electic Service
Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Four-County Electric Power Association
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
*Pennyrile Rural Electric Cooperative Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
*Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Gas Utilities

Investor-Owned:
None.

Electric Utilities

Investor-Owned:
Central Power and Light Company
Community Public Service Company
Dallas Power and Light Company
El Paso Electric Company
Gulf States Utilities
Houston Lighting and Power Company
Southwestern Electric Power Company
*Southwestern Electric Service Company
Southwestern Public Service Company
Texas Electric Service Company
Texas Power and Light Company
West Texas Utilities Company
Publicly-Owned:
*Lower Colorado River Authority
Rural Electric Cooperatives:
*Pedernales Electric Cooperative

The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations, and services provided by an electric utility (whether privately owned or publicly owned) within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decisions of such municipalities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally-owned electric utilities listed below are not under the commission's original ratemaking jurisdiction.

Electric Utilities

Publicly-Owned:
Austin Electric Department
Garland Electric Department
*Lubbock Power and Light
San Antonio City Public Service Board

State: Texas

Regulatory Authority: Railroad Commission of Texas.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Lone Star Gas Company
Peoples Natural Gas Division of Northern Natural Gas Company
Pioneer Natural Gas Company
Southern Union Gas Company

The Railroad Commission of Texas has special appellate jurisdiction over ratemaking decisions of the governing body of any municipality which affect the rates of a municipally-owned gas utility as provided by State statute. The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits. These municipal authorities would be state agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas:

Gas Utilities

Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned:
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Utah Power and Light Company
Rural Electric Cooperatives:
*Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire

State: Virginia

Regulatory Authority: Virginia State Corporation Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Virginia, Inc.
Virginia Electric and Power Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Delmarva Power and Light Company of Virginia
*Old Dominion Power Company
Potomac Edison Company
Potomac Electric and Power Company

Rural Electric Cooperatives:

*Prince William Electric Cooperative

The following covered utility within the State of Virginia is not regulated by the Virginia State Corporation Commission:

Gas Utilities

Publicly-Owned:
City of Richmond, Virginia, Department of Public Utilities

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Pacific Power and Light Company
Puget Sound Power and Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission.

Electric Utilities

Publicly-Owned
* Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
* Public Utility District No. 1 of Douglas County
* Public Utility District No. 1 of Franklin County
Public Utility District of Grant County

Public Utility District No. 1 of Grays Harbor County
* Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
* Richland Energy Services Department
Seattle City Light Department
Tacoma Public Utilities—Light Division

State: West Virginia

Regulatory Authority: West Viriginia Public Service Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of West Virginia, Inc.
Consolidated Gas Supply Corporation
Equitable Gas Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Virginia Electric and Power Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission.

Gas Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
* Lake Superior District Power Company
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:
Cheyenne Light, Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company
Rural Electric Cooperative:
* Tri-County Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976, 1977, 1978 or 1979. All, except those marked (*), are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) either did not exceed the NECPA threshold of 750 million kilowatt-hours in 1979, for purposes other than resale, or do not have residential or commercial sales and, therefore, are not covered by NECPA Titles II and VII. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned
Alabama Power Company
Appalachian Power Company (VA)
Appalachian Power Company (WV)
Arizona Public Service Company
Arkansas-Missouri Power Company (AR)
Arkansas-Missouri Power Company (MO)
Arkansas Power & Light Company (AR)
Arkansas Power & Light Company (LA)
Arkansas Power & Light Company (TN)
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company (MT)
Black Hills Power & Light Company (SD)
Black Hills Power & Light Company (WY)
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company (NC)
Carolina Power & Light Company (SC)
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
*Central Kansas Power Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Community Public Service Company (NM)
Community-Public Service Company (TX)
Connecticut Light & Power Company
Consolidated Edison Company of New York
Consumers Power Company
Dallas Power & Light Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
Delmarva Power & Light Company of Maryland
Delmarva Power & Light Company of Virginia
Detroit Edison Company
Duke Power Company (NC)
Duke Power Company (SC)
Duquesne Light Company
Eastern Edison Company
El Paso Electric Company (NM)
El Paso Electric Company (TX)
Empire District Electric Company (AR)
Empire District Electric Company (KS)
Empire District Electric Company (MO)
Empire District Electric Company (OK)
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)
Hartford Electric Light Company
Hawaiian Electric Company, Inc.
Houston Lighting & Power Company
Idaho Power Company (ID)
Idaho Power Company (NV)
Idaho Power Company (OR)
Illinois Power Company
Indiana & Michigan Electric Company (IN)
Indiana & Michigan Electric Company (MI)
Indianapolis Power & Light Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kansas City Power & Light Company (KS)
Kansas City Power & Light Company (MO)
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company (KY)
Kentucky Utilities Company (TN)
Kingsport Power Company
*Lake Superior District Power Company (MI)
*Lake Superior District Power Company (WI)
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Metropolitan Edison Company
*Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Edison Company
Missouri Power & Light Company
Missouri Public Service Company
Missouri Utilities Company
Monongahela Power Company (OH)
Monongahela Power Company (WV)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Narragansett Electric Company
Nevada Power Company
New Bedford Gas & Edison Light Company
*New Mexico Electric Service Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
Northern Indiana Public Service Company
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (SD)
Northern States Power Company (WI)
*Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company (AR)

Oklahoma Gas & Electric Company (OK)
*Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Power Light Company (CA)
Pacific Power Light Company (ID)
Pacific Power Light Company (MT)
Pacific Power Light Company (OR)
Pacific Power Light Company (WA)
Pacific Power Light Company (WY)
Pennsylvania Electric Company (PA)
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
Potomac Electric Power Company (VA)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (ME)
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
*Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas Electric Service Company
Texas Power & Light Company
Toledo Edison Company
Tucson Electric Power Company
*UGI-Luzerne Electric Division
Union Electric Company (IA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
*Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Virginia Electric & Power Company (WV)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Central Telephone & Utilities Corporation (CO)
Western Power Division of Central Telephone & Utilities Corporation (KS)
Wheeling Electric Company
Wisconisn Electric Power Company (MI)
Wisconisn Electric Power Company (WI)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned
*Albany Water, Gas & Light Commission (GA)
Anaheim—Electric Division (CA)
*Anchorage Municipal Light & Power Department (AK)
Austin Electric Department (TX)
*Bristol Tennessee Electric System (TN)
*Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
*Clarksville Department of Electricity (TN)
*Clatskanie People's Utility District (OR)
*Cleveland Division of Light & Power (OH)
*Cleveland Utilities (TN)
Colorado Springs Department of Public Utilities (CO)
Decatur Electric Department (AL)
*Dothan Electric Department (AL)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
*Florence Electricty Department (AL)
*Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
*Glendale Public Service Department (CA)
*Greeneville Light & Power System (TN)
*Greenville Utilities Commission (NC)
Huntsville Electric System (AL)
Imperial Irrigation District (CA)
*Independence Power & Light Department (MO)
Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electricity and Water (FL)
Lansing Board of Water & Light (MI)
*Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
*Lower Colorado River Authority (TX)
*Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
*Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
*North Little Rock Electric Department (AR)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
*Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
*Power Authority of New York (NY)
*Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
*Public Utility District No. 1 of Douglas County (WA)
*Public Utility District No. 1 of Franklin County (WA)
Public Utility District of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
*Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Electric Power Authority
*Richland Energy Services Department (WA)
Richmond Power & Light (IN)
Riverside Public Utilities (CA)
*Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
South Carolina Public Service Authority
Springfield City Utilities (MO)
*Springfield Utilities Board (OR)
Springfield Water, Light & Power Department (IL)
Tacoma Public Utilities—Light Division (WA)
Tallahassee, City of (FL)
*Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
*Wilson Utilities Department (NC)

Rural Electric Cooperatives
*Anoka Electric Cooperative (MN)
*Appalachian Electric Cooperative (TN)
Chugah Electric Association (AK)
Clay Electric Cooperative (FL)
Cumberland Electric Membership Corporation (TN)
*Duck River Electric Membership Corporation (TN)
*First Electric Cooperative Corporation (AR)
*Flint Electrical Membership Corporation (GA)
*Four County Electric Power Association (MS)
*Gibson County Electric Membership Corporation (TN)
Green River Electric Corporation (KY)
Henderson-Union Rural Electric Cooperative Corporation (KY)
*Jackson Electric Membership Corporation (GA)
Lee County Electric Cooperative (FL)
*Meriwether Lewis Electric Cooperative (TN)

Middle Tennessee Electric Membership Corporation (TN)
*Moon Lake Electric Association (UT)
North Georgia Electric Membership Corporation (GA)
*Pedernales Electric Cooperative (TX)
*Pennyrile Rural Electric Cooperative Corporation (KY)
*Prince William Electric Cooperative (VA)
*Singing River Electric Power Association (MS)
*South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
*Southern Pine Electric Power Association (MS)
Southwest Louisiana Electric Membership Corporation (LA)
*Southwest Tennessee Electric Membership Corporation (TN)
*Tri-County Electric Membership Corporation (TN)
*Tri-County Electric Association , Inc. (WY)
*Umatilla Electric Cooperative Association (OR)
*Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
*Warren Rural Electric Cooperative Corporation (KY)
*West Kentucky Rural Electric Cooperative Corporation (KY)
*Withlacoochee River Electric Cooperative (FL)

Federal Agencies

*Bonneville Power Administration (OR)
*Tennessee Valley Authority (TN)
*Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978 or 1979 and are covered by PURPA Title III and NECPA Titles II and VII. Utilities marked (*) do not have residential or commercial sales, and therefore, are not covered by NECPA Title II or VII. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parenthses.

Investor-Owned

Alabama Gas Corporation
Alaska Gas & Service Company
Anadarko Production Company
Arizona Public Service Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Louisiana Gas Company (OK)
Arkansas-Louisiana Gas Company (TX)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas Western Gas Company
Associated Natural Gas Company (AR)
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Baltimore Gas & Electric Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
*Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (GA)
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Service Gas Company (covered by NECPA only)
City Gas Company of Florida
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Columbia Gas of West Virginia, Inc.
Commonwealth Gas Company
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consolidated Gas Supply Corporation
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Light Company of Columbus
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Greeley Gas Company (MN)
Gulf States Utilities Company
Illinois Power Company
Indiana Gas Company
Inland Gas Company
Inter City Gas Limited
Intermountain Gas Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (CO)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (MN)
Iowa Electric Light & Power Company (NE)
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (NE)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (KS)
Kansas-Nebraska Natural Gas Company (NE)
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company
Kokomo Gas & Fuel Company
Laclede Gas Company Consolidated
Lone Star Gas Company (OK)
Lone Star Gas Company (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnesota Gas Company (IA)
Minnesota Gas Company (MN)
Minnesota Gas Company (NE)
Minnesota Gas Company (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MN)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Bedford Gas and Edison Light Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
North Carolina Natural Gas Corporation
North Central Public Service Company (IA)
North Central Public Service Company (MN)
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc. (CO)
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (KS)
Peoples Natural Gas Company, Division of Internorth, Inc. (MI)
Peoples Natural Gas Company, Division of Internorth, Inc. (MN)
Peoples Natural Gas Company, Division of Internorth, Inc. (MO)

Peoples Natural Gas Company, Division of Internorth, Inc. (NE)
Peoples Natural Gas Company, Division of Internorth, Inc. (TX)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company, Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
Northern Indiana Public Service Company
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Pioneer Natural Gas Company
Providence Gas Company
Public Service Company of Colorado
Public Service Company, Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Electric & Gas Company
South Jersey Gas Company
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southern Union Gas Company (TX)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Terre Haute Gas Corporation
T. W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
Virginia Electric & Power Company
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned

Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities (VA)
City Public Service Board (San Antonio) (TX)
Colorado Springs Department of Public Utilities (CO).
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

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Part IX

Environmental Protection Agency

Regional Consistency

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 56

[AD-FRL 1589-3]

Regional Consistency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This final rulemaking sets forth Regional Consistency regulations which were proposed on March 9, 1979 (44 FR 27558). EPA is required to promulgate regulations for this purpose under Section 301(a)(2) of the Clean Air Act (Act). The intended effect of this action is to assure fair and consistent application of rules, regulations and policy throughout the country by assuring that the actions of each individual EPA Regional Office is consistent with one another and national policy.

DATES: These regulations take effect February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Creekmore, Standards Implementation Branch, Control Programs Development Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711 (919-541-5437).

Availability of Related Information: A docket (No. OAQPS 79-11) containing all supporting information used by EPA in developing the regulations is available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1979 (44 FR 13043), EPA proposed regulations for Regional Consistency. These regulations were required under Section 301(a)(2) of the Act as amended on August 7, 1977. Section 301(a)(2) reads in part as follows:

> (2) Not later than one year after the date of enactment of this paragraph, the Administrator shall promulgate regulations establishing general applicable procedures and policies for Regional Offices and employees (including the Regional Administrator) to follow. * * * Such regulations shall be designed—
>
> (A) To assure fairness and uniformity in the criteria, procedures, and policies applied by the various Regions in implementing and enforcing the Act;
>
> (B) To assure at least an adequate quality audit of each State's performance and adherence to the requirements of this Act in implementing and enforcing the Act, particularly in the review of new sources and in enforcement of the Act; and
>
> (C) To provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by such officers and employees in implementing and enforcing the Act.

The proposed regulations consisted of the following major provisions:

1. A provision requiring EPA to include in rules, regulations and program directives a mechanism for assuring consistency of application among the Regional Offices. This provision applied to rules, regulations, and program directives that EPA issued after August 6, 1977.
2. A provision requiring the Regional Offices to follow those mechanisms.
3. A provision requiring the Regional Offices to obtain Headquarters concurrence on significant interpretations of the Act or rules, regulations, or program directives.
4. Revised procedures for timely and more comprehensive distribution of policy and guidance.
5. Provisions for annual audits of the performance of EPA Regional Offices and State and local agencies in implementing and enforcing the Act.

Since the proposal, EPA has reevaluated its approach to the Regional Consistency requirements. The major aim in this reevaluation was to reduce resources necessary to implement the requirements by making use of existing consistency mechanisms whenever possible. As a result, the regulations promulgated below are altered to reduce the resources needed to implement consistency programs. The alterations do not affect the thrust of the Regional Consistency regulations as proposed; that is, the regulations being promulgated today still focus attention on identifying, preventing, and resolving regional inconsistencies.

The regulations being promulgated result in an expansion of existing mechanisms to accomplish the same purposes as the regulations originally proposed. The mechanisms utilized to promote regional consistency will include Headquarters overview of specific regional program activities, periodic EPA interregional meetings, and special reviews of controversial State Implementation Plan (SIP) revisions. The State grant performance evaluations will assure an adequate review of the States adherence to the requirements of the Act.

Support for these types of revisions came from the public comments on the proposed regulations. Of the eighteen public comments received, four felt that the proposal was too elaborate and inflexible. Most commenters agreed that the major role of the regulations should be to identify inconsistencies and resolve them as quickly as possible. Major consistency problems identified involved modeling practices, new source reviews, and control strategy approvals for SIPs. These problems can be identified and resolved without resorting to the involved administrative procedures contained in the proposal.

Differences Between the Final Rule and Proposal

1. Section 56.4 of the proposal, "Mechanisms for fairness and uniformity—Responsibilities of Headquarters employees," proposed to require EPA to include in rules, regulations, and program directives a mechanism for assuring consistency of application among the Regional Offices. In addition, this section applied to all rules, regulations and program directives that EPA issued after August 6, 1977. The promulgated regulations below limit the applicability of § 56.4 to rules and regulations under Parts 51 and 58* proposed or promulgated after the effective date of these regulations. Emphasis will be placed on SIP issues. Mechanisms are not required for New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAPS). Regulations for NSPS and NESHAPS are very detailed and involve extensive support documentation. They apply to specific source categories. In addition, initial implementation of these standards is coordinated closely with Headquarters. Headquarters periodically compiles a summary of problems associated with the initial implemenation and makes the summaries available to the Regional Offices for their guidance. Conversely, SIP related requirements are general and cover a wide range of actions. For example, SIP control strategy development encompasses several pollutants and hundreds of distinct sources.

Mechanisms are not required for program directives because they are themselves mechanisms EPA uses to foster consistent policy applications. Thus, EPA considers it redundant to require program directives to contain consistency mechanisms and that provision of the proposed regulation has been eliminated. The Administrator also eliminated the proposal requirement that EPA retroactively develop

* Part 51: Requirements for Preparation, Adoption, and Submittal of Implementation Plans.
Part 58: Ambient Air Quality Surveillance.

mechanisms for regulations issued after August 6, 1977. Any inconsistencies fostered by regulations issued prior to the effective date of these regulations can be resolved through existing mechanisms. Also, retroactive action would require a major effort at a time when EPA resources are already heavily committed.

EPA has eliminated the requirement proposed in Section 56.4 that negative declarations be included with relevant rulemaking. The regulation now provides that negative declarations be included in the supporting documentation or in the docket. Entering negative declarations in the docket will better preserve the record explaining why EPA found it unnecesssary to provide mechanisms to ensure consistent application of some regulations.

2. Section 56.5 of the proposed regulation, "Mechanisms for fairness and uniformity—Responsibilities of Regional Office employees," required the Regional Offices to obtain written Headquarters concurrence on significant interpretations of the Act or rules, regulations or program directives. The regulations promulgated below require only that the Regional Offices "seek concurrence from the appropriate EPA Headquarters office on significant interpretations of the Act." For example, the Regional Offices would typically seek concurrence on issues involving the following topics from the Headquarters office indicated:

a. Legal Issues—Office of General Counsel, Associate General Counsel, Air, Noise, and Radiation Division, Washington, D.C.

b. Enforcement Issues.

i. Stationary Sources—Director, Division of Stationary Source Enforcement, Washington, D.C.

ii. Mobile Sources—Director, Field Operations and Support Division, Washington, D.C.

c. State Implementation Plans.

i. General Guidance—Director, Control Progams Development Division, Research Triangle Park, N.C.

ii. Transportation Plans—Director, Office of Transportation and Land Use Planning, Washington, D.C.

iii. Inspection/Maintenance—Director, Emission Control Technology Division, Ann Arbor, Michigan.

This is not meant to affect those specific situations where EPA presently requires concurrence, or may find it necessary to require concurrence in the future. The revised requirement is not as burdensome as the original proposal and is not as likely to unnecessarily delay Regional Offices in taking action, yet should be effective in assuring consistency.

3. Section 56.6 of the proposed regulations "Dissemination of policy and guidance," required a comprehensive information system to be implemented by the Assistant Administrator for Air, Noise, and Radiation. The regulations below decentralize the dissemination of policy and guidance to several program offices and reduce the number of summaries, etc., needed. Program offices must compile documents containing relevant EPA program directives and guidance and make them available to the public. The program offices must also update the compilations. The revised § 56.6 significantly reduces the resources required to implement the proposed regulations while providing essentially similar guidance dissemination programs. While these regulations require a less complex dissemination system than originally proposed, EPA policy and guidance will be much more available to the State and local agencies and to the public than it is at present.

4. Section 56.7 of the proposed regulation, Regional Office audits, has been deleted. EPA feels that there are a number of alternative ways to promote regional consistency including Headquarter's review of specific regional programs, special review of controversial SIP actions, regular interregional meetings, and guidance dissemination from Headquarters. No audit manuals or annual audits will be necessary to carry out these regulations. EPA's existing normal/special action classification system provides special review of controversial SIPs. Where consistency issues are involved, the SIP revision will be classified as special action. This means that the revision undergoes a more detailed evaluation by the various EPA program and staff offices than do normal actions. In addition, EPA schedules regular interregional meetings which serve as a forum to resolve major inconsistencies. Finally, the Headquarters guidance dissemination program will make policy and guidance material more widely and immediately available to the States and local agencies that are to implement many of the policies EPA originates. Thus, formalized, existing mechanisms, together with an expanded policy guidance system and Headquarters overview, can be used to achieve the same goals as the Regional Office audit with much less resource expenditure.

5. Section 56.8 of the proposed regulations, State and local agency performance audits, has been rewritten. The existing Section 105 grant performance evaluation requirements together with other program reviews are substituted for the separate State agency audit originally proposed in §56.8. The 105 grant requirements (40 CFR 35, Subpart B, Program Grants) provide for air program assistance grants for prevention and control of air pollution at the State, interstate, or local level. For this program, EPA develops major program elements and outputs through the Zero Based Budget (ZBB) process. The ZBB process is also used to develop performance guidance which determines the programs EPA will emphasize in grant assistance. The grant procedures require EPA Regional Administrators to prepare an annual Agency evaluation report which describes program performance of the grantees for the previous year. Where appropriate, the report contains recommendations for upgrading current agency operations and provides guidance for development of upcoming grant applications. The regulations promulgated today require EPA Regional Administrators to notify the public of the availability of the evaluation report through a **Federal Register** notice. Heretofore, EPA, while informally carrying out the grant regulations, has not always prepared a formal report of its evaluations, or if so, has not deliberately made the report available to the public. Under the regulations promulgated today, EPA will formalize the reports prepared under the grant procedures to satifsfy the intent of Congress for an audit of State agency performance.

The regulation promulgated below appears as a new Part 56 of Title 40, Chapter I, Subchapter C. In summary, the regulation's main features are as follows:

1. A provision requiring EPA to include in rules and regulations related to Parts 51 and 58, a mechanism for assuring consistency of application among the Regional Offices.

2. A provision requiring the Regional Offices to follow those mechanisms.

3. A provision requiring the Regional Offices to consult with appropriate EPA Headquarters offices on significant interpretations of the Act or rules, regulations, or program directives.

4. Revised procedures for timely and more comprehensive distribution of policy and guidance.

5. Provisions for annual evaluations of the performance of State and local agencies through the existing 105 grant evaluation mechanism.

Public Comments

During the period March 9, 1979 to June 20, 1979, EPA received 18 letters

addressing the proposed regulations. EPA held a public hearing in Washington, D.C., on May 21, 1979, but no comments were presented. The sources of the written comments were as follows:

Source	Number
State air pollution control agencies	7
Regional air pollution control agencies	2
Counties	1
Public utilities	2
Industries	4
Trade association (organic chemicals)	1
Consultant	1
Total	18

Some commenters felt the regulation would restrict Regional flexibility and adversely affect EPA's responsiveness to Regional concerns and local problems. Other commenters felt that the regulations should include specific measures to assure consistency and not depend on the audit manuals for these requirements. The industrial commenters (utilities, trade association, consultant) were concerned more with the flexibility issue, while the State and Regional air pollution control agencies were divided in their opinion.

The discussion of the public comments has been broken into seven categories. The first category discusses comments on and changes in the overall concept of the regulations. The next six categories discuss comments on and changes in individual sections of the regulations.

1. Comments on the Overall Concept of the Regulations

1.1 *Comment:* Several commenters expressed fear that the regulations were too elaborate, and would restrict Regional flexibility. They felt that Regional Administrators should have the latitude to use their experience and judgment under broad guidelines and performance criteria. One commenter was particularly concerned about the provisions in Section 56.5 which requires a responsible Regional official to seek concurrence on interpretations of the Act when such interpretations may result in inconsistent application. The commenter felt that current Regional Office responsiveness, accessibility, and independence to react quickly to local problems would be sacrificed if Regional Office employees must obtain written concurrence from Headquarters on frequent occasions.

Response: As discussed previously, EPA is sensitive to these issues and the regulations below simplify the proposed consistency requirements to reduce cost and increase Regional flexibility. They replace the new mechanisms required in the proposal with existing mechanisms such as State 105 grant evaluations, guidance dissemination, review of controversial SIPs, and special program evaluations as deemed necessary by Headquarters. In addition, § 56.5 has been revised to require that the responsible Regional official no longer needs such written concurrence but shall "seek concurrence from the appropriate EPA Headquarters office" on interpretations of the Act potentially involving consistency problems.

1.2 *Comment:* One commenter felt that the proposed regulation included limited reference to workshops in Denver, Atlanta, Dallas, and Boston, even though the preamble states that they were developed largely from suggestions developed at the public workshop.

Response: EPA held the workshops to obtain a broad spectrum of public comment on the direction the Regional Consistency regulations should take. Issues 1–15 of the preamble to the proposal discuss the major issues raised in workshops and not incorporated into the proposed regulations.

1.3 *Comment:* Another commenter felt that EPA brushes aside timely consideration of organizational differences as a source of inconsistency from one Region to another. The inability of one Region to deal with another because of differing organizational structure is a major barrier.

Response: EPA has regular interregional meetings of policy level managers. A major purpose of these meetings is to identify and resolve Regional inconsistencies. As a result of the regulations promulgated today, more emphasis will be placed on consistency problems. The Agency has also established staff offices which specialize in Headquarters—Regional Office relations. The Office of Regional Programs under the Office of Air Quality Planning and Standards in Durham, North Carolina, is an example. It identifies potential consistency problems with emphasis on Regional Office implementation of Headquarters' guidance. Another example is the Office of Regional Liaison in Washington, D.C., which deals with Regional/Headquarters issues and is in the Office of the Administrator.

1.4 *Comment:* One commenter felt that such consideration of fairness and uniformity or flexibility/consistency at the time of rulemaking as required by § 56.4, is appropriate, but was concerned about provisions for such consideration as may be needed at later dates as the programs are being implemented.

Response: The reviews required by the program grant requirements referenced in § 56.7 will be repeated annually, and they should assure consistency over the long term. In addition, EPA schedules regular interregional meetings to discuss current issues. Where problems arise that cannot be resolved through these meetings, Headquarters develops guidance as necessary.

1.5 *Comment:* The preamble of the proposal put forth an example mechanism for assuring consistency of regulatory application. The example referred to EPA's regulations for prevention of significant deterioration. In the PSD regulation (43 FR 26380), EPA has established a national clearinghouse to assist the Regions and States in determining what constitutes Best Available Control Technology (BACT) or Lowest Achievable Emission Rates (LAER). One commenter felt that the clearinghouse idea would lead to EPA collecting control information from various sources and imposing the most stringent measure that one particular source might meet across the board. Another commenter felt that the clearinghouse idea circumvented the Clean Air Act by determining BACT and LAER with no provision for public comment.

Response: EPA intends that BACT and LAER determinations be made on a case-by-case basis. Thus, the various reviewing agencies will always consider individual situations in applying BACT and LAER. In addition, EPA is distributing a guidance document to assist reviewing agencies in implementing these requirements.

EPA feels that adequate opportunities for public comment have been provided in establishing BACT and LAER. The regulations in each State making reviews for BACT and LAER have been subject to public comment. EPA requires under § 51.18(h), "Review of New Sources and Modifications," that States obtain public comment on permit applications for major new sources or modifications. The public can then comment on any LAER determinations therein. In addition, under §51.24(r), "Prevention of Significant Deterioration of Air Quality ," those States granting prevention of significant deterioration permits are required to make available to the public information on permit applications from major sources. Such information would allow the public to comment on any BACT determinations therein. Finally, the party most affected and interested in BACT and LAER determinations, the source itself, has ample opportunity to express its

opinions to the regulatory agency concerning such determinations.

For the States where EPA implements their new source review programs, § 52.21(r), "Prevention of Significant Deterioration of Air Quality," provides for public access to permit applications.

1.6 *Comment:* One commenter felt that a basic reason for inconsistencies was that the Act allowed States to establish standards more stringent than the national ambient air quality standards.

Response: This comment was discussed in issue number 11 of the preamble to the proposal. EPA's reply remains the same: the Act allows State discretion. These regulations will help insure that departures by the States represent conscious decisions and will help eliminate unintended inconsistencies.

1.7 *Comment:* One commenter focused on possible inconsistencies in EPA's implementation of the air quality standards and PSD requirements. His comments were as follows:

1.7.1 EPA modeling guidance does not provide for regional consistency. Certain models, such as RAM and CRSTER have been applied in similar situations with different results in different Regions. This application has resulted in more stringent regulations in one Region than another.

1.7.2 A uniform averaging period for enforcement of emission limitations should be established.

1.7.3 The ambient air quality standards should be enforced uniformly in all Regions of the country. The PSD increment should not be applied to existing sources in place of the ambient standards.

1.7.4 All changes in EPA procedures which result from the consistency rulemaking should be applied to new analysis and applications only. A cutoff date consistent with the regulation implementation should be specified well in advance in order that diffusion analysis currently in progess would not be invalidated.

Response: With regard to the problem discussed in 1.7.1, EPA is addressing interpretation and application of models through workshops with the Regional Offices. EPA invited modeling experts from State and local agencies, universities, and other organizations to attend these workshops. The first such workshops were held in late 1978. The Summary Report entitled, "Regional Workshops on Air Quality Modeling: A Summary Report," is available through the EPA Regional Offices. Topics involving application of models were addressed and means to improve consistency were considered. EPA held a second workshop in February 1980. The report from that workshop will be available from the Regional Offices in the summer of 1980. More workshops are being planned so that eventually all the problem areas identified can be resolved.

EPA published notice of an action, entitled "Regulation of Large Coal-Fired Boilers for SO_2 Emissions," (45 FR 9994) on February 14, 1980. The issue of appropriate averaging times may be examined in this rulemaking.

As for issue 1.7.3, these regulations will promote uniform enforcement of emission limitations developed to attain ambient air quality standards. The PSD increment is only applied to existing sources when required by the Act and EPA regulations.

With regard to the issue in 1.7.4, if new diffusion analyses/or applications are developed in the future which are more accurate than existing techniques, there is little choice than to apply these techniques. However, the development of new techniques does not itself require that EPA reevaluate all previous actions.

1.8 *Comment:* One commenter reiterated a comment made in the preproposal meetings that EPA's monitoring requirements do not provide for a consistent data base. The commenter did not feel that monitoring regulations promulgated on May 10, 1979 (44 Fr 27558), resolved this problem. The commenter felt that regional consistency will be difficult to attain because the existing regulations allow States to use their own mechanisms to determine attainment, and allow many areas to go unclassified because of lack of monitoring data.

Response: The ambient air monitoring, data reporting, and surveillance regulations referred to above do allow States a certain amount of flexibility with regard to monitoring requirements. However, they contain requirements which provide for uniform data quality and consistency in area coverage throughout the country. The subject regulations require the States to meet certain criteria which consist of approved monitoring devices, quality assurance, instrument siting specifications, and sampling intervals. Adherence to these criteria will assure comparable data from all monitoring stations of certain minimum, acceptable quality. The stations in the network will be termed State and Local Air Monitoring Stations (SLAMS). The number and location of the SLAMS will be jointly determined by the State and Regional Office as data needs dictate.

The subject regulations require the States to designate certain of the SLAMS as National Air Monitoring Stations (NAMS). EPA specifies the numbers and locations for NAMS in the major population areas of the country and requires a more frequent data reporting interval. The concept of NAMS is designed to provide data for national policy analysis/trends and for reporting to the public on major metropolitan areas. Existing plans are to establish the following approximate number of NAMS throughout the United States: particulate matter, 636; sulfur dioxide, 224; carbon monoxide, 121; ozone, 208; nitrogen dioxide, 65; and lead, 100.

Both the monitoring criteria and the NAMS provisions of the regulations will result in much more consistent air quality monitoring and data availability than has occurred in the past. The future outlook for monitoring is for continued collection of high quality data and assessment of networks to maintain their responsiveness to data needs.

2. Comments on Section 56.1, Definitions

2.1 *Comment:* Section 56.1, "Program Directive," is defined to exclude "an interpretation or clarification of existing rules, regulations, or program directives." One commenter was concerned that under this definition, the offset interpretative ruling would not be covered by Regional Consistency.

Response: Inclusion of the word "interpretation" was confusing to some persons. The intent was to exclude short memos "clarifying" policy or regulations not major policy documents like the offset policy rulings. To resolve this problem, the entire exclusion has been deleted from the definition.

3. Comments on Section 56.3, Policy

3.1 *Comment:* One commenter was concerned that the regulation does not contain a scheme to correct inconsistencies once they have been identified.

Response: Under § 56.4 each appropriate SIP related rule must include a mechanism to assure that the regulation is implemented fairly and consistently. EPA defines "mechanism" in § 56.1 as "an administrative procedure, guideline, manual, or written statement." The mechanism is intended to help identify and correct inconsistencies. Once EPA identifies the problem, several methods are available to correct the inconsistency. An administrative procedure such as EPA's special action review of SIP rulemaking can be an effective tool to correct inconsistencies. The appropriate Headquarters review office can nonconcur on the regulatory package and ask the author to revise it. Where the issue is related to inconsistent use of guidelines, revision to the appropriate guideline should correct inconsistencies.

For example, consistency problems with the use of the RAM and CRSTER diffusion models (see Section 1.7.1) have been resolved by revising the appropriate EPA guideline.

4. Comments on Section 56.4, Mechanisms for Fairness and Uniformity—Responsibilities of Headquarters

4.1 *Comment:* One commenter felt that the regulations should specifically not exclude actions covered under 5 U.S.C. 553 such as: "interpretative rules, general statements of policy, or rules of agency organization, procedures or practice," or rules that require no prior notice because this would be "impractical, unnecessary, or contrary to the public interest."

Response: EPA feels that interpretative rules and general statements of policy normally serve as consistency mechanisms in themselves. That is, such actions provide guidance in dealing with a variety of issues, including consistency issues. Thus, requiring mechanisms for these actions is unnecessary.

4.2 *Comment:* One commenter felt that a negative determination under Section 56.4(d) of the proposed regulations should be reviewable as a final Agency action under Section 307 of the Act.

Response: EPA believes that negative determinations are not reviewable as final Agency actions.

4.3 *Comment:* One commenter felt that an appeals board or appeals mechanism should be established to allow a non-judicial review of Regional Office decisions.

Response: This comment was discussed under issue number 8 of the preamble to the March 9, 1979, proposal. EPA feels that establishment of an appeals board would create another level of review and would be less efficient than the proposed scheme in minimizing inconsistencies among the Regional Offices.

5. Comments on Section 56.5, Mechanisms for Fairness and Uniformity—Responsibilities of Regional Office Employees

5.1 *Comment:* One commenter felt that § 56.5 should be expanded to provide that a copy of correspondence covering a judgment decision should be forwarded to the next higher Headquarters level for review regardless of the decision.

Response: EPA does not have the resources to review all regional correspondence and determinations made by the Regional Offices. EPA does hold periodic interregional staff meetings to familiarize regional people with the actions of other Regional Offices and review national policy. Also, Headquarters coordinates closely with the Regional Offices when implementing major regulations and requirements.

5.2 *Comment:* To ensure that the consistency that is to be achieved among Regions is also consistent with the law and with Agency policy, one commenter felt that § 56.5(a) should be expanded to add, between "consistent with" and "the activities * * * " the words: "the Act and Agency policy as set forth in Agency rules and program guidance documents, and with * * *"

Response: EPA feels the comment has merit and the suggested revision has been made in principle.

6. Comments on 56.6, Dissemination of Policy and Guidance

6.1 *Comment:* One commenter felt that provisions should be made to insure that affected industries and the public are provided with timely notice of and access to any changes or revisions made in EPA policy.

Response: § 56.6(a) requires appropriate EPA program offices to develop air programs policy and guidelines systems and a procedure to update them. Also, they must distribute these materials to the Regional Offices and State and local agencies, and make them available to the public. This should provide a timely notice of any changes in EPA policy. In addition, many documents, principally guidelines, may be purchased through the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

6.2 *Comment:* One commenter felt that EPA should (1) include new source review decisions as part of the air program policy and guidance material to provide for ready comparisons from State to State, and (2) establish a common permit format for all States.

Response: EPA has set up a clearinghouse for BACT/LAER determinations and has circulated a compilation of BACT/LAER determinations in a guidance book. This will provide for ready comparisons of BACT/LAER determinations from State to State. Also, on May 19, 1980 (45 FR 33290), EPA promulgated regulations to speed up and simplify the process of obtaining environmental permits through "permit consolidation." A key aspect of this effort is the use of a simplified form to apply for permits under a number of different EPA programs. However, many States operate new source review programs within the framework of approved SIPs. While EPA supports a common permit format, the Clean Air Act does not require the States to adopt such a format. Thus, permit consolidation is optional on the part of the States with regard to new source review programs.

7. Comments on 56.7, Regional Office Audits and 56.8, State and Local Agency Performance Audits

Most of the comments on §§ 56.7 and 56.8 centered around issues such as: (1) the administrative requirements are too elaborate and detailed, (2) the yearly audits were too frequent, (3) public comment should be allowed on the draft audit reports, and (4) non-EPA employees should be allowed on the EPA audit teams and advisory committees. As discussed under the Background section, EPA agrees that the proposed §§ 56.7 and 56.8 requirements are too elaborate and detailed.

The regulations promulgated today delete § 56.7 and substitute the Section 105 grant evaluation mechanisms for the system of State audits originally proposed under § 56.8 The development of audit manuals and audit reports as envisioned in the proposal are too resource intensive. As explained in the Background section of the preamble, regional inconsistencies can be adequately identified by formalizing existing mechanisms without a major new administrative effort.

Environmental, Economic, and Energy Impact Assessments

EPA has classified this regulation as a "significant-routine" action in accordance with guidance contained in the May 29, 1979, **Federal Register**, "Improving Environmental Regulations; Final Report Implementing E.O. 12044," (44 FR 30988). Thus, EPA has prepared no environmental, economic, or energy impact assessments. The regulations should result in more consistent application throughout the country of air pollution control requirements. They will tend to preclude economic inequities because of varying interpretations of the Act's requirements. There will be no discernible energy impact.

Plan to Evaluate the Effectiveness of Regional Consistency Regulations

Section 2(d)(8) of Executive Order 12044 requires that each new significant regulation have a plan to evaluate its effectiveness. Approximately two years from the date of promulgation, EPA will place a notice in the **Federal Register** soliciting public comment on implementation of the regional consistency regulations. The States and local agencies and the public will be asked to comment on the fairness and uniformity mechanisms, grant audit

report and procedures, and the dissemination of EPA policy guidance. A separate copy of the notice will be sent to all State agencies and major local agencies. These comments will be summarized and published in the Federal Register. A copy of the evaluation plan is available in the docket (OAQPS 79-11).

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

EPA amends Title 40, Chapter I, Subchapter C, of the *Code of Federal Regulations* by adding a new Part 56 as follows:

PART 56—REGIONAL CONSISTENCY

Sec.

56.1 Definitions.
56.2 Scope.
56.3 Policy.
56.4 Mechanisms for fairness and uniformity—Responsibilities of Headquarters employees.
56.5 Mechanisms for fairness and uniformity—Responsibilities of Regional Office employees.
56.6 Dissemination of policy and guidance.
56.7 State agency performance audits.

Authority: Section 301(a)(2) of the Clean Air Act as amended (42 USC 7601).

§ 56.1 Definitions.

As used in this part, all terms not defined herein have the meaning given them in the Clean Air Act.

"Act" means the Clean Air Act as amended (42 USC 7401 et seq.).

"Administrator," "Deputy Administrator," "Assistant Administrator," "General Counsel," Associate General Counsel," "Deputy Assistant Administrator," "Regional Administrator," "Headquarters," "Staff Office," "Operational Office," and "Regional Office" are described in Part 1 of this Title.

"Mechanism" means an administrative procedure, guideline, manual, or written statement.

"Program directive" means any formal written statement by the Administrator, the Deputy Administrator, the Assistant Administrator, a Staff Office Director, the General Counsel, a Deputy Assistant Administrator, an Associate General Counsel, or a division Director of an Operational Office that is intended to guide or direct Regional Offices in the implementation or enforcement of the provisions of the Act.

"Responsible official" means the EPA Administrator or any EPA employee who is accountable to the Administrator for carrying out a power or duty delegated under Section 301(a)(1) of the Act, or is accountable in accordance with EPA's formal organization for a particular program or function as described in Part 1 of this Title.

§ 56.2 Scope.

This part covers actions taken by—

(a) Employees in EPA Regional Offices, including Regional Administrators, in carrying out powers and duties delegated by the Administrator under Section 301(a)(1) of the Act; and

(b) EPA employees in Headquarters to the extent that they are responsible for developing the procedures to be employed or policies to be followed by Regional Offices in implementing and enforcing the Act.

§ 56.3 Policy.

It is EPA's policy to—

(a) Assure fair and uniform application by all Regional Offices of the criteria, procedures, and policies employed in implementing and enforcing the Act;

(b) Provide mechanisms for identifying and correcting inconsistencies by standardizing criteria, procedures, and policies being employed by Regional Office employees in implementing and enforcing the Act; and

(c) Insure an adequate quality audit for each State's performance in implementing and enforcing the Act.

§ 56.4 Mechanisms for fairness and uniformity—Responsibilities of Headquarters employees.

(a) The Administrator shall include, as necessary, with any rule or regulation proposed or promulgated under Parts 51 and 58 of this chapter[1] mechanisms to assure that the rule or regulation is implemented and enforced fairly and uniformly by the Regional Offices.

(b) The determination that a mechanism requried under paragraph (a) of this section is unnecessary for a rule or regulation shall be explained in writing by the responsible EPA official and included in the supporting documentation or the relevant docket.

§ 56.5 Mechanisms for fairness and uniformity—Responsibilities of Regional Office employees.

(a) Each responsible official in a Regional Office, including the Regional Administrator, shall assure that actions taken under the Act:

(1) Are carried out fairly and in a manner that is consistent with the Act and Agency policy as set forth in the Agency rules and program directives,

(2) Are as consistent as reasonably possible with the activities of other Regional Offices, and

(3) Comply with the mechanisms developed under § 56.4 of this part.

(b) A responsible official in a Regional Office shall seek concurrence from the appropriate EPA Headquarters office on any interpretation of the Act, or rule, regulation, or program directive when such interpretation may result in inconsistent application among the Regional Offices of the Act or rule, regulation, or program directive.

(c) In reviewing State Implementation Plans, the Regional Office shall follow the provisions of the guideline, revisions to State Implementation Plans—Procedures for Approval/Disapproval Actions, OAQPS No. 1.2-005A, or revision thereof. Where regulatory actions may involve inconsistent application of the requirements of the Act, the Regional Offices shall classify such actions as special actions.

§ 56.6 Dissemination of policy and guidance.

The Assistant Administrators of the Offices of Air, Noise and Radiation, and of Enforcement, and the General Counsel shall establish as expeditiously as practicable, but no later than one year after promulgation of this part, systems to disseminate policy and guidance. They shall distribute material under foregoing systems to the Regional Offices and State and local agencies, and shall make the material available to the public. Air programs policy and guideline systems shall contain the following:

(a) Compilations of relevant EPA program directives and guidance, except for rules and regulations, concerning the requirements under the Act.

(b) Procedures whereby each Headquarters program office and staff office will enter new and revised guidance into the compilations and cause superseded guidance to be removed.

(c) Additional guidance aids such as videotape presentations, workshops, manuals, or combinations of these where the responsible Headquarters official determines they are necessary to inform Regional Offices, State and local agencies, or the public about EPA actions.

§ 56.7 State agency performance audits.

(a) EPA will utilize the provisions of Subpart B, Program Grants, of Part 35 of this chapter, which require yearly evaluations of the manner in which grantees use Federal monies, to assure that an adequate evaluation of each

[1] Part 51 is entitled, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans." Part 58 is entitled, "Ambient Air Quality Surveillance."

State's performance in implementing and enforcing the Act is performed.

(b) Within 60 days after comment is due from each State grantee on the evaluation report required by § 35.538 of this chapter, the Regional Administrator shall incorporate or include any comments, as appropriate, and publish notice of availability of the evaluation report in the **Federal Register.**

Tab B—Estimated Resource Demand

Regional Consistency Regulations—Estimated Resource Demand

A summary of the Estimated Resource Demand appears in Table 1.

A. One Time Expenses

Task: Revise Policy and Guidance Dissemination System

OANR would accomplish this task through in-house work. EPA work effort in revising the system is estimated to be about 0.4 work-years over the first year for OANR. In addition, OE and OGC are expected to require about 0.4 work-years each. Thus, the total estimate is 1.2 work-years.

B. Annual Expenses

1. Task: Develop Mechanisms for Ensuring Fairness and Uniformity in New Regulations, Policy, Etc.

Mechanisms will be developed only for Parts 51 and 58. Although the amount of new effort spent in incorporating mechanisms for these subparts may be small, more coordination with Regional Offices and State agencies will be needed in developing new regulations. This greater coordination is estimated to cost about 0.25 work-years of effort annually.

2. Task: Regional Office Compliance With Mechanisms

Regional Offices already generally follow Headquarters' guidance, so this task would not add any new burden.

3. Task: Annual State Agency Performance Evaluations

Each Regional Office currently performs an annual State Agency Performance Evaluation. This regulation adds two additional requirements to the performance evaluation. First, the comments from the grantee on the evaluation report must be incorporated into the evaluation report. Second, the public must be notified of the availability of the report through a notice in the **Federal Register**. It is estimated that each Region will require about 0.15 work-years to perform these tasks or a total of 1.5 work-years.

4. Task: Maintain Policy and Guidance Dissemination System

This task would require one group to coordinate the implementation of the system. Other groups would have to update the system by providing new material. This task is estimated to cost about 0.25 work-years annually for OANR. In addition, OE is expected to require about 0.25 work-years and OGC 0.15 work-years for a combined effort of 0.65 work-years.

Table 1.—*Regional Consistency Regulations*

[Estimated resource demand on EPA]

Task	Years after promulgation	
	1	2
A. One Time Expense (Work-Years)		
1. Revise guidance dissemination system	1.20	
Rounded total (all EPA)	1.20	
B. Annual Expenses (Work-Years)		
1. Develop mechanisms for ensuring fairness and uniformity in new regulations policy, etc	0.25	0.25
2. Regional Office compliance with mechanisms		0
3. Annual State Agency Performance Evaluations		1.5
4. Maintain policy and guidance system		0.65
Rounded total (all EPA)	0.25	2.40

Tab C—Evaluation Plan

Plan to Evaluate the Effectiveness of Regional Consistency Regulations

Introduction.

The Regional Consistency regulations are intended to promote fair and uniform application of EPA rules and regulations by EPA Regional Offices and assure that States adhere to the requirements of the Clean Air Act. The regulations require the following:

1. Incorporation of mechanisms for fairness and uniformity into significant SIP related rules or regulations that implement the requirements of the Clean Air Act.

2. Regions must follow these mechanisms and consult with the appropriate EPA Headquarters' office on significant interpretations of the Act, regulations, or program directives.

3. Dissemination of policy and guidance through a compilation of all relevant EPA program policy issuances.

4. Audits of States and local air agencies through the existing 105 grant audit mechanism.

The 105 grant audits should help EPA determine how well the provisions are followed and also help determine the adequacy of the basic mechanisms themselves. However, it is still necessary to evaluate the overall effectiveness of the program in order to comply with Section 2(d)(8) of Executive Order 12044. This order requires that each new significant regulation have a plan for evaluation of its effectiveness.

Procedure for Evaluation of Regional Consistency Regulations

1. It is anticipated that the first 105 grant audit report under 40 CFR 35 will be completed approximately 1 year from promulgation of the Regional Consistency regulations. The guidance dissemination systems should also be completed about a year after promulgation of these regulations. Thus, approximately one year after notice of availability of 105 grant audit reports, EPA will place a notice in the **Federal Register** soliciting public comment on implementation of the Regional Consistency regulation. The public and States will be asked to comment on and to suggest how the regulations could be improved by addressing such questions as the following:

a. Are there areas not covered by the 105 grant audit that should be?

b. Are the mechanisms for assuring fairness and uniformity in application of rules and regulations effective?

c. Are the State regulations and EPA policy guidance implemented in a timely manner?

d. Are States adhering to the requirements of the Clean Air Act in implementing and enforcing its provisions?

e. Is EPA guidance disseminated in a timely manner to all appropriate users?

2. The **Federal Register** notice will inform the public where copies of the grant audit reports, guidance documents, and other actions are available for public review. It will also summarize EPA action on the Regional Consistency regulations.

4. The public comment period will last 60 days.

5. Within 120 days of the end of the public comment period, EPA will prepare a report which summarizes the public comments and discusses possible changes to the Regional Consistency regulations as a result of such comments.

6. Subsequent notices will be published in the **Federal Register** at five year intervals.

Estimated Resource Demand

A summary of the estimated resource demand appears in Table 1. These are one-time expenses.

1. *Task: Prepare Federal Register notice requesting public comment.* This action involves coordination within Headquarters and Regional Offices to identify for the public the location of

various grant audit reports and guidance documents. With this and related information the **Federal Register** notice requesting public comment will be prepared. It is anticipated that the first grant audits will be completed approximately 1 year from promulgation of the Regional Consistency regulations. Allowing the public another year to evaluate the impact of the regulations on regional consistency means that the notice requesting public comments would appear about 2 years after the regulations are promulgated. The task would be repeated at 5 year intervals thereafter. The initial notice should require approximately 2 work-months. Subsequent notices would require about 3 work-months each to prepare because of the increased number of regulations covered by the consistency regulations.

2. *Task: Evaluate comments on Regional Consistency regulations and publish findings.* This task would require from 2–3 work-months depending on the number of regulations covered under Regional Consistency provisions and the number of public comments received. The evaluation 5 years hence would require from 3–4 work-months because of the increased number of regulations covered by the consistency regulations.

Table 1.—Development of Evaluation Plan—Regional Consistency Regulations

One-Time Expenses (Work-Years)

Task	Years After Promulgation	
	2	7
1. Prepare FEDERAL REGISTER notice requesting public comment	0.2	0.3
2. Evaluate comments on Regional Consistency regulations and publish findings in the FEDERAL REGISTER	0.2–0.3	0.3–0.4

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federal register

Wednesday
December 24, 1980

Part X

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Automobile and Light-Duty Truck Surface Coating Operations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1627-8]

Standards of Performance for New Stationary Sources; Automobile and Light-Duty Truck Surface Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes standards of performance to limit emissions of volatile organic compounds (VOC) from new, modified, and reconstructed automobile and light-duty truck surface coating operations within assembly plants. The standards were proposed and published in the **Federal Register** on October 5, 1979.

The standards implement the Clean Air Act and are based on the Administrator's determination that automobile and light-duty truck surface coating operations within assembly plants contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed automobile and light-duty truck surface coating operations to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental and energy impacts.

EFFECTIVE DATE: December 24, 1980.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The Background Information Document (BID) for the final standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Automobile and Light-Duty Truck Surface Coating Operations—Background Information for Promulgated Standards" (EPA–450/3–79–030b).

Docket. The Docket, number A–79–05, containing supporting information used in developing the promulgated standards is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday at the EPA's Central Docket Section, West Tower, Lobby Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Smith, Chief, Standards Preparation Section (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5421.

SUPPLEMENTARY INFORMATION:

The Standards

The promulgated standards apply to new, modified, or reconstructed automobile and light-duty truck surface coating operations for which construction is commenced after October 5, 1979. The standards apply to each prime coat operation, each guide coat operation, and each topcoat operation within an assembly plant where components of an automobile or light-duty truck body are coated. Operations used to coat plastic body parts and all-plastic bodies on separate coating lines are not covered. However, operations which coat all-metal bodies or metal bodies with plastic body parts attached before coating are covered by the standards. Emissions of VOC from affected facilities are limited as follows: 0.16 kilograms of VOC per liter of applied coating solids from prime coat operations, 1.40 kilograms of VOC per liter of applied coating solids from guide coat operations, 1.47 kilograms of VOC per liter of applied coating solids from topcoat operations.

Although the emission limits are based on the use of waterborne coating materials in each coating operation, they can also be met with solvent-borne coating materials through the use of other control techniques such as incineration.

Annual model changeovers or switches to larger cars and changes in the application of coatings to increase film thickness are not covered as modifications under § 60.14.

The owner or operator is required to conduct a performance test each calendar month and report the results to EPA within ten days of the end of any month in which the affected facility is not in compliance with the standards. The calculation of the volume weighted average mass of VOC per volume of applied coating solids during each calendar month constitutes a performance test. While Method 24 is the reference method for use in this performance test to determine data used in the calculation of the volatile content of coatings, provisions have been made to allow the use of coatings manufacturers' formulation data to determine the volume fraction of solids.

In addition to the non-compliance report, the owner or operator of an affected facility who utilizes incineration to comply with the standards must submit reports quarterly on incinerator performance.

Environmental, Energy, and Economic Impacts

Environmental, energy, and economic impacts of standards of performance are normally expressed as incremental differences between the impacts from a facility complying with the standards and those for one complying with the emission standards in a typical State Implementation Plan (SIP). In the case of automobile and light-duty truck surface coating operations, the incremental differences will depend on the control levels that will be required by revised SIPs. Revisions to most SIPs are currently in progress.

Most existing automobile and light-duty truck surface coating operations are located in areas which are considered nonattainment areas for purposes of achieving the National Ambient Air Quality Standard (NAAQS) for ozone. New facilities are expected to locate in similar areas. States are in the process of revising their SIPs for these areas and are expected to include revised emission limitations for automobile and light-duty truck surface coating operations in their new SIPs. In revising their SIPs, the States are relying on the control techniques guideline document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coil, Paper, Fabrics, Automobiles and Light-Duty Trucks" (EPA–450/2–77–008 [CTG]).

Since control technique guidelines are not binding, States may establish emission limits which differ from the guidelines. To the extent States adopt the emission limits recommended in the control techniques guideline document as the basis for their revised SIPs, the promulgated standards will have little environmental, energy, or economic impacts. The actual incremental impacts of the promulgated standards will be determined by the final emission limitations adopted by the States in their revised SIPs. For the purpose of this rulemaking, however, the environmental, energy, and economic impacts of the standards have been

estimated based on emission limits contained in existing SIPs at the end of 1978 when development of background information for the standards began.

In addition to achieving further reductions in emissions beyond those required by a typical SIP, standards of performance have other benefits. They establish a degree of national uniformity to avoid situations in which some States may attract industries by relaxing air pollution standards relative to other States. Further, standards of performance improve the efficiency of a case-by-case determination of best available control technology (BACT) for operations located in attainment areas and lowest achievable emission rates (LAER) for operations located in nonattainment areas by providing a reference document for use in these determinations. The reason is that the process for developing standards of performance involves a comprehensive analysis of alternative emission control technologies and an evaluation and verification of emission test methods. Detailed cost and economic analyses of various regulatory alternatives are presented in the supporting documents for the standards of performance.

The regulatory alternatives and the environmental, energy, and economic impacts of the standards of performance were originally presented in "Automobile and Light-Duty Truck Surface Coating Operations—Background Information for Proposed Standards" (EPA–450/3–79–030) and remain unchanged since proposal.

The standards of performance will reduce emissions of VOC from new, modified, or reconstructed automobile and light-duty truck surface coating operations by about 80 percent, compared to operations controlled to levels contained in SIPs existing at the end of 1978. National emissions of VOC will be reduced by about 4,800 megagrams per year by 1983 based on the projection that four new assembly plants are planned by that year.

Water pollution impacts of the standards will be relatively small compared to the volume and quality of the wastewater discharged from plants meeting 1978 SIP levels. The standards are based on the use of waterborne coating materials. These materials will lead to a slight increase in the chemical oxygen demand (COD) of the wastewater discharged from the surface coating operations within assembly plants. This increase in COD, however, is not great enough to require additional wastewater treatment capacity beyond that required in existing assembly plants using solvent-borne surface coating materials.

The solid waste impact of the promulgated standards will be negligible compared to the amount of solid waste generated by existing assembly plants. The solid waste generated by waterborne coatings, however, is very sticky and equipment cleanup is more time-consuming than for solvent-borne coatings. Solid wastes from waterborne coatings will not present any special disposal problems since they can be disposed of by conventional landfill procedures.

National energy consumption will be increased by the use of waterborne coatings to comply with the standards. The equivalent of an additional 18,000 barrels of fuel oil will be consumed per year at a typical assembly plant. This is an increase of about 25 percent in the energy consumption of a typical automobile surface coating operation. National energy consumption will be increased by the equivalent of about 72,000 barrels of fuel oil per year in 1983. This increase is based on the projection that four new assembly plants will be built by 1983. The impacts presented here are based on the use of waterborne coatings which will require extensive air conditioning in the affected facilities to meet temperature and humidity requirements. High solids coatings, while promising, are not yet adequately demonstrated to be used as the basis of the standards. However, to the extent new facilities comply with the standards through the use of higher solids content coatings, improved transfer efficiencies, and the use of incineration, with heat recovery, the energy impacts will be less than presented here.

The standards will increase the capital and annualized costs of new automobile and light-duty truck surface coating operations within assembly plants. Capital costs for the four new assembly plants planned by 1983 will be increased by approximately $19 million as a result of the standards. These incremental costs represent about 0.2 percent of the $10 billion planned for all capital expenditures. The corresponding annualized costs will be increased by approximately $9 million in 1983. The price of an automobile or light-duty truck will be increased by less than 0.1 percent when spread over the manufacturer's entire production. The Administrator considers this increase a reasonable control cost.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** of meetings of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal. These meetings occurred on September 27 and 28, 1977. The meetings were open to the public and each attendee was given ample opportunity to comment on the standards recommended for proposal. The standards were proposed in the **Federal Register** on October 5, 1979. Public comments were solicited at that time and copies of the Background Information Document (BID) were distributed to interested parties. The public comment period extended from October 5, 1979, to December 14, 1979, with a public hearing on November 9, 1979.

In addition to five presentations at the public hearing, seventeen comment letters were received on the proposed standards of performance and on the two proposed reference methods, Methods 24 and 25, which were promulgated on October 3, 1980 (45 FR 65956). These comments have been carefully considered and, where determined to be appropriate, changes have been made.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from automobile and light-duty truck manufacturers, coatings manufacturers, trade and professional associations, State air pollution control agencies, and Federal agencies. While a number of changes were made in the standards since proposal, the affected facilities, control techniques on which the standards are based, and the impacts remain as presented in the BID for the proposed standards. Detailed discussions of these comments can be found in the BID for the promulgated standards. The major comments have been combined into the following areas: General, Emission Control Technology, Economic Impacts, Legal Considerations, and Reference Methods and Monitoring.

General

The proposed standards exempted certain specific changes which may occur in an existing facility from being considered a modification. One commenter requested that "Engineering Design Changes" be added to the list of exemptions to provide for those minor changes made during the model year to improve quality or performance of the finished product.

No changes were made in the standards as a result of this comment. While requested, data were not received defining the term "Engineering Design Changes." EPA, therefore, re-examined the available data. Under § 60.397, changes in the application of coatings to

increase coating film thickness are already exempted. In addition, minor operational changes which could include design changes are allowed as long as emissions are not increased. Therefore, EPA has concluded that sufficient relief is already provided in the standards and "engineering design changes" will not specifically be exempted.

Similarly, changes made to comply with SIP requirements were requested by one commenter to be added to the list of exemptions.

Changes to an existing facility made to comply with a SIP should reduce emissions rather than increase them. Therefore, it also would not be considered a modification. If a SIP-required change is significant enough to be considered as a reconstruction in accordance with provisions of § 60.15, the standards would apply only if it is determined to be technically and economically feasible.

One commenter stated that the transfer efficiency for waterborne air atomized spray was measured to be 36 percent instead of 40 percent at a new plant and that this value should be used as the basis for the standards.

At the time the standards were proposed, the volume of coating material required for line purging during color changes in a topcoat operation was not considered to have a significant impact on transfer efficiency. Recent tests conducted by the commenter and submitted in support of his position have indicated that line purging does have an impact. However, the same tests also indicated the technology is available to control this source of VOC emission by collecting the purge material or by incorporating design and operational changes to the spray system, thereby increasing transfer efficiency. After evaluating and discussing these data with the commenter, EPA agrees that changes to the proposed standards should be made. The baseline transfer efficiency for air atomized spray systems for waterborne coatings without purge after each vehicle on which the emission limits for guide coat operations were established has been changed from 40 percent to 39 percent. The corresponding baseline transfer efficiency for air atomized spray systems for waterborne coatings with partial purge and partial purge capture on which the emission limits for topcoat operations were established has been changed from 40 to 37 percent. As a result, the emission limits have been changed to 1.40 kilograms of VOC per liter of applied coating solids from guide coat operations, and 1.47 kilograms of VOC per liter of applied coating solids from topcoat operations.

In addition to the changes in the emission limitations, changes were made to the table of transfer efficiencies in § 60.393. Separate transfer efficiencies have been established for waterborne and solvent-borne air atomized spray systems since data indicate that higher transfer efficiencies can be realized with solvent-borne coatings. Also, because of the significance of line purging, separate tables of transfer efficiencies are now established for systems which collect 100 percent of the purge material and for systems which purge after each vehicle and do not collect any of the purge material. Provisions have also been made to allow the use of appropriate transfer efficiencies for systems which employ partial purge capture.

A number of commenters requested that the standards allow an exemption for special paints and colors which may be used in relatively small volumes because an arithmetic average of all coatings as required in the proposed standards could result in values greatly different than a volume weighted average.

The proposed standards required that an arithmetic average VOC content of all topcoat materials be used in determining emissions. This form of averaging was originally believed to provide a simple and reasonably accurate approximation of the volume weighted average VOC content of the coating materials actually used. However, for many of the new paint systems, a small percentage of the colors accounts for a large percentage of the paint used. Therefore, the arithmetic average can be significantly different from the weighted average. The promulgated standards require that compliance be demonstrated by a performance test which involves the calculation of the volume weighted average mass of VOC per volume of applied coating solids for each calendar month. While this does not exempt special paints and colors, it does allow their use in small volumes with an equitable impact on the overall average, and therefore the concerns of the commenters have been addressed.

Comments were received which requested that the coating of plastic car bodies and plastic components used on metal car bodies be excluded from the standards. Data provided by the commenter indicated significant problems associated with the use of surface coatings designed for sheet metal on plastic bodies or plastic body components. These include the increased incidence of ruptures and delaminations in the plastic substrate with the increased temperatures required to cure waterborne coatings. Similarly, the increased temperatures associated with waterborne coatings may cause defects in the materials used to join plastic body components.

The objections raised by the commenter were judged reasonable. Since current industry practice is to coat temperature sensitive plastic bodies and body components on separate lines, the standards have been changed to exclude those operations. However, plastic body components that are attached to the metal body before it is coated do not cause the coating operation of that body to be excluded.

Emission Control Technology

Two commenters objected to the weighted average method of determining the VOC content of prime coat material because of problems they anticipate with "flow control" additives. Flow control additives are added to an electrodeposition (EDP) tank to maintain or improve the application process and are added on a periodic basis. The commenters claim that flow control additives should not be included when determining the mass of VOC per volume of applied coating solids because flow control additives are not added on a continuous basis. The commenters contended that determinations of VOC when flow control additives are added will differ greatly from periods when flow control additives are not added.

The prime coat emission limit is based on a volume of solids weighted average VOC content of all makeup material including flow control additives added to an EDP tank during one calendar month. Flow control additives are high in VOC content but are added only periodically as stated by the commenter. If a short time period (such as daily) were used to calculate VOC emissions, the effect of flow control additions could be significant, causing wide daily fluctuations. A longer averaging period dampens these fluctuations. Information supplied to EPA during the development of these standards indicates that makeup material including flow control additives is available to meet an emission limit of 0.16 kilograms of VOC per liter of applied coating solids when averaged over a calendar month. Therefore, a monthly averaging period and the proposed value, including flow control additives, are appropriate.

Several commenters objected to the prime coat emission limit, which is equivalent to 1.2 pounds of VOC per gallon of coating minus water, claiming that such prime coat material is not available.

As indicated above, data from one automobile manufacturer indicates that prime coat material including flow control additives is available and operating experience demonstrates that the emission limit established for prime coat operations is achievable. Therefore, the emission limit will not be changed.

Economic Impacts

Two commenters recommended that separate standards be established for modified or reconstructed plants due to the differences in economic impacts.

If a physical or operational change were made to an existing facility at an automobile or light-duty truck plant which would potentially increase VOC emissions, the owner or operator could implement changes necessary to hold VOC emissions at or below the previous level so as not to be subject to the promulgated standards. This course of action would be less costly to the plant than implementing control strategies to meet the promulgated new source performance standards. This reduction in emissions could be accomplished by switching to a lower VOC content coating or by incineration of a portion of the VOC emission stream. Both of these options are available to all plants and are reasonable.

Although it is unlikely to happen, if an existing facility is modified and is required to meet the limits of the NSPS, the cost of implementing control strategies to meet the standards would be more costly but would still be affordable. Some existing plants may not be able to use the full range of control options because of physical constraints. For example, an existing enamel plant may not have enough room in its existing spray booths to use waterborne coatings. The enamel booths are shorter than the ones required for waterborne coatings. Nevertheless, the enamel plant has other options such as use of higher solids enamels and incineration which would be available to all such plants.

Control options that are affordable are available to all existing plants to reduce emissions to pre-modification levels or to meet the levels of the promulgated standards; therefore, the development of separate standards for modifications is not justified.

Under § 60.15 if physical or operational changes were made to an existing plant and the fixed capital cost of the new components exceeded 50 percent of the fixed capital cost that would be required to construct a comparable new facility, and it is technologically and economically feasible to meet the standards, the changes would qualify as a reconstruction. During development of the standards, EPA found that the capital cost of a new coating facility is approximately $30,000,000 (average of solvent-borne enamel and lacquer systems) and that the capital cost of implementing the standards is approximately $750,000 for that facility. In the extreme situation under reconstruction where the cost of a reconstructed facility would be $15,000,000, or 50 percent of the cost of a new facility, the cost of implementing the standards would still be $750,000 or 0.5 percent of the capital cost of the facility. The Administrator believes that this cost is not unreasonable and that relief is provided for a source in unusual financial stiuations through § 60.15 which requires that it be economically feasible for a reconstructed source to meet the applicable standards. Therefore, separate standards for reconstructed plants are not justified. The promulgated standards will apply to modified and reconstructed facilities as well as new facilities.

Legal Considerations

One commenter suggested that EPA should develop criteria to identify innovative control technologies for which "innovative waivers" may be granted.

On October 31, 1979, the White House issued a fact sheet on the President's Industrial Innovation Initiatives. Included in this fact sheet is a directive for the EPA Administrator to develop and publicize a clear implementation policy and set of criteria for the award of "innovative waivers" and to "assess the need for further regulatory authority." EPA is committed to carrying out this directive, and therefore the Administrator has requested that the Office of Enforcement initiate an implementation policy regarding the award of innovative technology waivers.

EPA will consider, but is not committed to, the commenter's request for specific innovative control technology criteria or procedures for issuing waivers for automobile and light-duty truck surface coating operations; EPA's decision will, in part, depend upon the outcome of the development of general criteria for innovative technology waivers.

Until the innovative control technology criterial are issued, EPA will continue to handle Section 111(j) waiver requests on a case-by-case basis.

Reference Methods and Monitoring

The two reference methods, Methods 24 and 25, were proposed along with the proposed standards for automobile and light-duty truck surface coating operations. Subsequently, these methods have been promulgated separately from these standards on Oct. 3, 1980 (45 FR 65956).

A revised version of the proposed Method 24 (Candidate 2) has been promulgated as the method to determine data used in the calculation of the VOC content of coatings. Procedures have been added to Method 24 to ensure that analytical data fall within established precision limits. In addition, the laboratory procedure for determining volume fraction of solids has been eliminated. Method 24 now requires volume fraction of solids be calculated from the coatings manufacturers' formulation data.

Changes to Method 25 include the new requirement of a performance test prior to use of analytical equipment. In addition, routine daily calibrations have been modified to be less time-consuming. Finally, minimum performance specifications for components of analytical equipment have been specified.

The detailed comments and responses regarding Methods 24 and 25 are presented in "Reference Methods 24 and 25—Background Information for Promulgated Test Methods" (EPA–450/3–79–030c).

In addition, one commenter recommended that Method 2 should not be specifically required and that a manifold system should be permitted for mixing and collecting a combined sample for multiple stacks in lieu of sampling each stack separately.

Method 2 requires that the volumetric flow rate be measured at the traverse points specified by Method 1. For new sources, provisions can be made during the design stage to allow for the proper location of the sampling ports which would be required. For reconstructed or modified sources where the standards may be applicable, the owner or operator can install stack extensions or use an increased number of traverse points as specified in Method 1. Therefore, the requirement to use Method 2 to measure the volumetric flow rate is reasonable and will not be changed.

In principle, a manifold system is acceptable. However, since many details are involved in designing an acceptable manifold system, approval of such a sampling technique will be made if the owner or operator can show to the Administrator's satisfaction that the use of a manifold system yields results comparable to those obtained by testing all stacks.

Several commenters stated opposition to the requirement dealing with the

monitoring of incinerators which are used to control VOC emissions. These commenters stated that the required accuracy of the temperature monitoring device (±2°C or ±3.5°F) was too restrictive.

Data solicited by EPA from incinerator and temperature monitor vendors confirm that at the high temperatures 760–820°C (1400–1500°F) at which these incinerators operate, the required accuracy was too restrictive. As a result, it has been changed to the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5°C (±4°F).

Reports Impact Analysis

A reports impact analysis for the automobile and light-duty truck surface coating operations standards was prepared in implementation of Executive Order 12044 (44 FR 30988, May 29, 1979). The purpose of the analysis is to estimate the economic impact of the reporting and recordkeeping requirements that would be imposed by the promulgated standards and by those appearing in the General Provisions of 430 CFR Part 60. The standards would require the preparation of three types of reports. First, the General Provisions (Subpart A of 40 CFR 60) would require notification reports which inform the Agency of facilities subject to new source performance standards (NSPS). These reports include notification of construction, anticipated start-up, actual start-up, and physical or operational changes. Second, reports of the results of the performance test performed each calendar month would be required for those months when the affected facility is not in compliance with the standards. Third, quarterly reports from the owner or operator of a facility using incineration devices to comply with the standard would be required for periods when incinerator temperature falls below that measured during the incinerator's most recent performance test. These reports will show whether these devices are being properly operated and maintained.

The respondent group to the reporting requirements of the standards would be the automobile and light-duty truck manufacturing industry. It is estimated that through the fifth year of standards applicability, approximately four new, modified, or reconstructed assembly plants will have been established which would have to comply with the reporting requirements of the standards. To implement the reporting requirements of the standards through the first five years of applicability the automobile and light-duty truck manufacturing industry would incur a manpower demand of about six man-years.

A copy of the Reports Impact Analysis is included in subcategory IV–J of the automobile and light-duty truck surface coating operations docket A–79–05.

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the promulgated rule and EPA responses to comments, the contents of the docket will serve as the record in case of judicial review. [Section 307 (d)(a)].

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for automobile and light-duty truck surface coating operations was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. Comments were requested specifically on Method 24 (Candidate 1 and Candidate 2) and on the coating material used as the basis for the prime coat emission limit.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

Although emission control technology may be available that can reduce emission below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance because of costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act, may require the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" (LAER) for new or modified sources locating in nonattainment areas (i.e., those areas where statutorily mandated health and welfare standards are being violated). In this respect, Section 173 of the Act requires that new or modified sources constructed in an area which exceeds the NAAQS must reduce emissions to the level which reflects the LAER, as defined in Section 171(3). The statute defines LAER as the rate of emissions based on the following, whichever is more stringent:

> (A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
>
> (B) the most stringent emission limitation which is achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source performance standard.

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act. These provisions require that certain sources employ BACT as defined in Section 169(3) for all pollutants regulated under the Act. BACT must be determined on a case-by-case basis, taking energy, environmental, and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In all cases, SIPs approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIPs must, in some cases, require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be

aware of this possibility in planning for such facilities.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed standards and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that the promulgated standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the BID for the proposed standards.

Dated: December 17, 1980.

Douglas M. Costle,

Administrator

40 CFR Part 60 is amended as follows:

1. By adding a definition of the term "volatile organic compound" to § 60.2 of Subpart A—General Provisions as follows:

§ 60.2 Definitions

"Volatile Organic Compound" means any organic compound which participates in atmospheric photochemical reactions; or which is measured by a reference method, an equivalent method, an alternative method, or which is determined by procedures specified under any subpart.

2. By adding Subpart MM as follows:

Subpart MM—Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations

Sec.

60.390 Applicability and designation of affected facility.
60.391 Definitions.
60.392 Standards for volatile organic compounds.
60.393 Performance test and compliance provisions.
60.394 Monitoring of emissions and operations.
60.395 Reporting and recordkeeping requirements.
60.396 Reference methods and procedures.
60.397 Modifications.

Authority.—Sections 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart MM—Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations

§ 60.390 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to the following affected facilities in an automobile or light-duty truck assembly plant: each prime coat operation, each guide coat operation, and each topcoat operation.

(b) Exempted from the provisions of this subpart are operations used to coat plastic body components or all-plastic automobile or light-duty truck bodies on separate coating lines. The attachment of plastic body parts to a metal body before the body is coated does not cause the metal body coating operation to be exempted.

(c) The provisions of this subpart apply to any affected facility identified in paragraph (a) of this section that begins construction, reconstruction, or modification after October 5, 1979.

§ 60.391 Definitions.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the Act and in Subpart A of this part.

"Applied coating solids" means the volume of dried or cured coating solids which is deposited and remains on the surface of the automobile or light-duty truck body.

"Automobile" means a motor vehicle capable of carrying no more than 12 passengers.

"Automobile and light-duty truck body" means the exterior surface of an automobile or light-duty truck including hoods, fenders, cargo boxes, doors, and grill opening panels.

"Bake oven" means a device that uses heat to dry or cure coatings.

"Electrodeposition (EDP)" means a method of applying a prime coat by which the automobile or light-duty truck body is submerged in a tank filled with coating material and an electrical field is used to effect the deposition of the coating material on the body.

"Electrostatic spray application" means a spray application method that uses an electrical potential to increase the transfer efficiency of the coating solids. Electrostatic spray application can be used for prime coat, guide coat, or topcoat operations.

"Flash-off area" means the structure on automobile and light-duty truck assembly lines between the coating application system (dip tank or spray booth) and the bake oven.

"Guide coat operation" means the guide coat spray booth, flash-off area and bake oven(s) which are used to apply and dry or cure a surface coating between the prime coat and topcoat operation on the components of automobile and light-duty truck bodies.

"Light-duty truck" means any motor vehicle rated at 3,850 kilograms gross vehicle weight or less, designed mainly to transport property.

"Plastic body" means an automobile or light-duty truck body constructed of synthetic organic material.

"Plastic body component" means any component of an automobile or light-duty truck exterior surface constructed of synthetic organic material.

"Prime coat operation" means the prime coat spray booth or dip tank, flash-off area, and bake oven(s) which are used to apply and dry or cure the initial coating on components of automobile or light-duty truck bodies.

"Purge" or "line purge" means the coating material expelled from the spray system when clearing it.

"Solvent-borne" means a coating which contains five percent or less water by weight in its volatile fraction.

"Spray application" means a method of applying coatings by atomizing the coating material and directing the atomized material toward the part to be coated. Spray applications can be used for prime coat, guide coat, and topcoat operations.

"Spray booth" means a structure housing automatic or manual spray application equipment where prime coat, guide coat, or topcoat is applied to components of automobile or light-duty truck bodies.

"Surface coating operation" means any prime coat, guide coat, or topcoat operation on an automobile or light-duty truck surface coating line.

"Topcoat operation" means the topcoat spray booth, flash-off area, and bake oven(s) which are used to apply and dry or cure the final coating(s) on components of automobile and light-duty truck bodies.

"Transfer efficiency" means the ratio of the amount of coating solids transferred onto the surface of a part or product to the total amount of coating solids used.

"VOC content" means all volatile organic compounds that are in a coating expressed as kilograms of VOC per liter of coating solids.

"Waterborne" or "water reducible" means a coating which contains more than five weight percent water in its volatile fraction.

(b) The nomenclature used in this subpart has the following meanings:

C_{aj} = concentration of VOC (as carbon) in the effluent gas flowing through stack (j) leaving the control device (parts per million by volume),

C_{bi} = concentration of VOC (as carbon) in the effluent gas flowing through stack (i) entering the control device (parts per million by volume),

C_{ok} = concentration of VOC (as carbon) in the effluent gas flowing through exhaust stack (k) not entering the control device (parts per million by volume),

D_{ci} = density of each coating (i) as received (kilograms per liter),

D_{dj} = density of each type VOC dilution solvent (j) added to the coatings, as received (kilograms per liter),

D_r = density of VOC recovered from an affected facility (kilograms per liter),

E = VOC destruction efficiency of the control device,

F = fraction of total VOC which is emitted by an affected facility that enters the control device,

G = volume weighted average mass of VOC per volume of applied solids (kilograms per liter),

L_{ci} = volume of each coating (i) consumed, as received (liters),

L_{ci}' = volume of each coating (i) consumed by each application method (l), as received liters),

L_{dj} = volume of each type VOC dilution solvent (j) added to the coatings, as received (liters),

L_r = volume of VOC recovered from an affected facility (liters),

L_s = volume of solids in coatings consumed (liters),

M_d = total mass of VOC in dilution solvent (kilograms),

M_o = total mass of VOC in coatings as received (kilograms),

M_r = total mass of VOC recovered from an affected facility (kilograms),

N = volume weighted average mass of VOC per volume of applied coating solids after the control device

$$\left(\frac{\text{kilograms of VOC}}{\text{liter of applied solids}}\right),$$

Q_{aj} = volumetric flow rate of the effluent gas flowing through stack (j) leaving the control device (dry standard cubic meters per hour),

Q_{bi} = volumetric flow rate of the effluent gas flowing through stack (i) entering the control device (dry standard cubic meters per hour),

Q_{ok} = volumetric flow rate of the effluent gas flowing through exhaust stack (k) not entering the control device (dry standard cubic meters per hour),

T = overall transfer efficiency,

T_l = transfer efficiency for application method (l),

V_{si} = proportion of solids by volume in each coating (i) as received

$$\left(\frac{\text{liter solids}}{\text{liter coating}}\right), \text{ and}$$

W_{oi} = proportion of VOC by weight in each coating (i), as received

$$\left(\frac{\text{kilograms VOC}}{\text{kilograms coating}}\right).$$

§ 60.392 Standards for volatile organic compounds

On and after the date on which the initial performance test required by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility VOC emissions in excess of:

(a) 0.16 kilograms of VOC per liter of applied coating solids from each prime coat operation.

(b) 1.40 kilograms of VOC per liter of applied coating solids from each guide coat operation.

(c) 1.47 kilograms of VOC per liter of applied coating solids from each topcoat operation.

§ 60.393 Performance test and compliance provisions.

(a) Sections 60.8 (d) and (f) do not apply to the performance test procedures required by this section.

(b) The owner or operator of an affected facility shall conduct an initial performance test in accordance with § 60.8(a) and thereafter for each calendar month for each affected facility according to the procedures in this section.

(c) The owner or operator shall use the following procedures for determining the monthly volume weighted average mass of VOC emitted per volume of applied coating solids.

(1) The owner or operator shall use the following procedures for each affected facility which does not use a capture system and a control device to comply with the applicable emission limit specified under § 60.392.

(i) Calculate the volume weighted average mass of VOC per volume of applied coating solids for each calendar month for each affected facility. The owner or operator shall determine the composition of the coatings by formulation data supplied by the manufacturer of the coating or from data determined by an analysis of each coating, as received, by Reference Method 24. The Administrator may require the owner or operator who uses formulation data supplied by the manufacturer of the coating to determine data used in the calculation of the VOC content of coatings by Reference Method 24 or an equivalent or alternative method. The owner or operator shall determine from company records on a monthly basis the volume of coating consumed, as received, and the mass of solvent used for thinning purposes. The volume weighted average of the total mass of VOC per volume of coating solids used each calendar month will be determined by the following procedures.

(A) Calculate the mass of VOC used in each calendar month for each affected facility by the following equation where "n" is the total number of coatings used and "m" is the total number of VOC solvents used:

$$M_o + M_d = \sum_{i=1}^{n} L_{ci} \; D_{ci} \; W_{oi} + \sum_{j=1}^{m} L_{dj} \; D_{dj}$$

[$\Sigma L_{dj} D_{dj}$ will be zero if no VOC solvent is added to the coatings, as received].

(b) Calculate the total volume of coating solids used in each calendar month for each affected facility by the following equation where "n" is the total number of coatings used:

$$L_s = \sum_{i=1}^{n} L_{ci} \; V_{si}$$

(c) Select the appropriate transfer efficiency (T) from the following tables for each surface coating operation:

Application Method	Transfer efficiency
Air Atomized Spray (waterborne coating)	0.39
Air Atomized Spray (solvent-borne coating)	0.50
Manual Electrostatic Spray	0.75
Automatic Electrostatic Spray	0.95
Electrodeposition	1.00

The values in the table above represent an overall system efficiency which includes a total capture of purge. If a spray system uses line purging after each vehicle and does not collect any of the purge material, the following table shall be used:

Application Method	Transfer efficiency
Air Atomized Spray (waterborne coating)	0.30
Air Atomized Spray (solvent-borne coating)	0.40
Manual Electrostatic Spray	0.62
Automatic Electrostatic Spray	0.75

If the owner or operator can justify to the Administrator's satisfaction that other values for transfer efficiencies are appropriate, the Administrator will approve their use on a case-by-case basis.

(*1*) When more than one application method (*l*) is used on an individual surface coating operation, the owner or operator shall perform an analysis to determine an average transfer efficiency by the following equation where "n" is the total number of coatings used and "p" is the total number of application methods:

$$T = \frac{\sum_{i=1}^{n} \sum_{\ell=1}^{p} T_\ell \, V_{si} \, L_{ci\ell}}{L_s}$$

(D) Calculate the volume weighted average mass of VOC per volume of applied coating solids (G) during each calendar month for each affected facility by the following equation:

$$G = \frac{M_o + M_d}{L_s \, T}$$

(ii) If the volume weighted average mass of VOC per volume of applied coating solids (G), calculated on a calendar month basis, is less than or equal to the applicable emission limit specified in § 60.392, the affected facility is in compliance. Each monthly calculation is a performance test for the purpose of this subpart.

(2) The owner or operator shall use the following procedures for each affected facility which uses a capture system and a control device that destroys VOC (e.g., incinerator) to comply with the applicable emission limit specified under § 60.392.

(i) Calculate the volume weighted average mass of VOC per volume of applied coating solids (G) during each calendar month for each affected facility as described under § 60.393(c)(1)(i).

(ii) Calculate the volume weighted average mass of VOC per volume of applied solids emitted after the control device, by the following equation: $N = G[1-FE]$

(A) Determine the fraction of total VOC which is emitted by an affected facility that enters the control device by using the following equation where "n" is the total number of stacks entering the control device and "p" is the total number of stacks not connected to the control device:

$$F = \frac{\sum_{i=1}^{n} Q_{bi} \, C_{bi}}{\sum_{1=1}^{n} Q_{bi} \, C_{bi} + \sum_{k=1}^{p} Q_{fk} \, C_{fk}}$$

If the owner can justify to the Administrator's satisfaction that another method will give comparable results, the Administrator will approve its use on a case-by-case basis.

(*1*) In subsequent months, the owner or operator shall use the most recently determined capture fraction for the performance test.

(B) Determines the destruction efficiency of the control device using values of the volumetric flow rate of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the device by the following equation where "n" is the total number of stacks entering the control device and "m" is the total number of stacks leaving the control device:

$$E = \frac{\sum_{i=1}^{n} Q_{bi} \, C_{bi} - \sum_{j=1}^{m} Q_{aj} \, C_{aj}}{\sum_{i=1}^{n} Q_{bi} \, C_{bi}}$$

(*1*) In subsequent months, the owner or operator shall use the most recently determined VOC destruction efficiency for the performance test.

(C) If an emission control device controls the emissions from more than one affected facility, the owner or operator shall measure the VOC concentration (C_{bi}) in the effluent gas entering the control device (in parts per million by volume) and the volumetric flow rate (Q_{bi}) of the effluent gas (in dry standard cubic meters per hour) entering the device through each stack. The destruction or removal efficiency determined using these data shall be applied to each affected facility served by the control device.

(iii) If the volume weighted average mass of VOC per volume of applied solids emitted after the control device (N) calculated on a calendar month basis is less than or equal to the applicable emission limit specified in § 60.392, the affected facility is in compliance. Each monthly calculation is a performance test for the purposes of this subpart.

(3) The owner or operator shall use the following procedures for each affected facility which uses a capture system and a control device that recovers the VOC (e.g., carbon adsorber) to comply with the applicable emission limit specified under § 60.392.

(i) Calculate the mass of VOC ($M_o + M_d$) used during each calendar month for each affected facility as described under § 60.393(c)(1)(i).

(ii) Calculate the total volume of coating solids (L_s) used in each calendar month for each affected facility as described under § 60.393(c)(1)(i).

(iii) Calculate the mass of VOC recovered (M_r) each calendar month for each affected facility by the following equation: $M_r = L_r D_r$

(iv) Calculate the volume weighted average mass of VOC per volume of applied coating solids emitted after the control device during a calendar month by the following equation:

$$N = \frac{M_o + M_d - M_r}{L_s T}$$

(v) If the volume weighted average mass of VOC per volume of applied solids emitted after the control device (N) calculated on a calendar month basis is less than or equal to the applicable emission limit specified in § 60.392, the affected facility is in compliance. Each monthly calculation is a performance test for the purposes of this subpart.

§ 60.394 Monitoring of emissions and operations.

The owner or operator of an affected facility which uses an incinerator to comply with the emission limits specified under § 60.392 shall install, calibrate, maintain, and operate temperature measurement devices as prescribed below:

(a) Where thermal incineration is used, a temperature measurement device shall be installed in the firebox. Where catalytic incineration is used, a temperature measurement device shall be installed in the gas stream immediately before and after the catalyst bed.

(b) Each temperature measurement device shall be installed, calibrated, and maintained according to accepted practice and the manufacturer's specifications. The device shall have an accuracy of the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5° C.

(c) Each temperature measurement device shall be equipped with a recording device so that a permanent record is produced.

(Section 114 of the Clean Air Act as amended (42 U.S.C. 74140))

§ 60.395 Reporting and recordkeeping requirements.

(a) Each owner or operator of an affected facility shall include the data outlined in subparagraphs (1) and (2) in the initial compliance report required by § 60.8.

(1) The owner or operator shall report the volume weighted average mass of VOC per volume of applied coating solids for each affected facility.

(2) Where compliance is achieved through the use of incineration, the owner or operator shall include the following additional data in the control device initial performance test requried by § 60.8(a) or subsequent performance tests at which destruction efficiency is determined: the combustion temperature (or the gas temperature upstream and downstream of the catalyst bed), the total mass of VOC per volume of applied coating solids before and after the incinerator, capture efficiency, the destruction efficiency of the incinerator used to attain compliance with the applicable emission limit specified in § 60.392 and a description of the method used to establish the fraction of VOC captured and sent to the control device.

(b) Following the initial report, each owner or operator shall report the volume weighted average mass of VOC per volume of applied coating solids for each affected facility during each calendar month in which the affected facility is not in compliance with the applicable emission limit specified in § 60.392. This report shall be postmarked not later than ten days after the end of the calendar month that the affected facility is not in compliance. Where compliance is achieved through the use of a capture system and control device, the volume weighted average after the control device should be reported.

(c) Where compliance with § 60.392 is achieved through the use of incineration, the owner or operator shall continuously record the incinerator combustion temperature during coating operations for thermal incineration or the gas temperature upstream and downstream of the incinerator catalyst bed during coating operations for catalytic incineration. The owner or operator shall report quarterly as defined below.

(1) For thermal incinerators, every three-hour period shall be reported during which the average temperature measured is more than 28°C less than the average temperature during the most recent control device performance test at which the destruction efficiency was determined as specified under § 60.393.

(2) For catalytic incinerators, every three-hour period shall be reported during which the average temperature immediately before the catalyst bed, when the coating system is operational, is more than 28° C less than the average temperature immediately before the catalyst bed during the most recent control device performance test at which destruction efficiency was determined as specified under § 60.393. In addition, every three-hour period shall be reported each quarter during which the average temperature difference across the catalyst bed when the coating system is operational is less than 80 percent of the average temperature difference of the device during the most recent control device performance test at which destruction efficiency was determined as specified under § 60.393.

(3) For thermal and catalytic incinerators, if no such periods occur, the owner or operator shall submit a negative report.

(d) The owner or operator shall notify the Administrator 30 days in advance of any test by Reference Method 25.

(Section 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.396 Reference methods and procedures.

(a) The reference methods in Appendix A to this part, except as provided in § 60.8 shall be used to conduct performance tests.

(1) Reference Method 24 or an equivalent or alternative method approved by the Administrator shall be used for the determination of the data used in the calculation of the VOC content of the coatings used for each affected facility. Manufacturers' formulation data is approved by the Administrator as an alternative method to Method 24. In the event of dispute, Reference Method 24 shall be the referee method.

(2) Reference Method 25 or an equivalent or alternative method approved by the Administrator shall be used for the determination of the VOC concentration in the effluent gas entering and leaving the emission control device for each stack equipped with an emission control device and in the effluent gas leaving each stack not equipped with a control device.

(3) The following methods shall be used to determine the volumetric flow rate in the effluent gas in a stack:

(i) Method 1 for sample and velocity traverses,

(ii) Method 2 for velocity and volumetric flow rate,

(iii) Method 3 for gas analysis, and

(iv) Method 4 for stack gas moisture.

(b) For Reference Method 24, the coating sample must be a 1-liter sample taken in a 1-liter container.

(c) For Reference Method 25, the sampling time for each of three runs must be at least one hour. The minimum sample volume must be 0.003 dscm except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator. The Administrator will approve the sampling of representative stacks on a case-by-case basis if the owner or operator can demonstrate to the satisfaction of the Administrator that the testing of representative stacks would yield results comparable to those that would be obtained by testing all stacks.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.397 Modifications.

The following physical or operational changes are not, by themselves, considered modifications of existing facilities:

(1) Changes as a result of model year changeovers or switches to larger cars.

(2) Changes in the application of the coatings to increase coating film thickness.

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Part XI

Department of Education

Library Career Training Program (Title II-B HEA)

DEPARTMENT OF EDUCATION

34 CFR Part 776

Library Career Training Program (Title II–B HEA)

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is issuing regulations for the Library Career Training Program authorized by Title II of the Higher Education Act of 1965, as amended. The regulations are being amended to reflect the statutory changes contained in the Education Amendments of 1980, incorporate the general selection criteria in the Education Division General Administrative Regulations (EDGAR), and reflect administrative policy decisions.

EFFECTIVE DATE: These final regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed by statute if the Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank A. Stevens, U.S. Department of Education (Room 3622, ROB–3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245–9530.

SUPPLEMENTARY INFORMATION: The Library Career Training Program is authorized by Part B of Title II of the Higher Education Act, as amended by the Education Amendments of 1980, Pub. L. 96–374. Under the Library Career Training Program the Secretary makes grants or contracts to institutions of higher education and library organizations or agencies. The purpose of the program is to train persons in librarianship through institutes, fellowships and traineeships, and establish, expand, or develop programs of library and information sciences.

On November 14, 1980, the Secretary published a notice in the **Federal Register** of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States. The regulations in this document are based on regulations listed in the November 14 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

These regulations have been rewritten for brevity and clarity. In substance, however, these regulations are largely the same as their predecessor. Most of the changes are mandated by the Education Amendments of 1980.

Because of the need to make awards based on these regulations early in 1981, it is not possible to obtain public comment upon them. However, it is intended that these regulations will undergo a more thorough and exhaustive revision at a later date for implementation in FY 1982, at which time these regulations will be made available for public comment.

The most significant revisions to the regulations include:

(a) The incorporation of the standard selection criteria contained in the Education Division General Administrative Regulations (EDGAR);

(b) The addition of the Secretary's authority to enter into contracts as well as grants;

(c) An increase in the amount of stipends and institutional support;

(d) A clarification of the Secretary's authority to establish funding priorities for each fiscal year;

(e) The expansion of the program purposes to include the development of new techniques of information transfer and communication technology; and

(f) The limitation of dependency allowances to trainees on a hardship basis only.

These regulations are being codified in Title 34 of the Code of Federal Regulations along with other Department of Education programs.

CITATION OF LEGAL AUTHORITY: A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(20 U.S.C. 1021, 1032)

Dated: December 19, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.036, Library Career Training. Part I of OMB Circular A–95 does not apply.)

The Secretary revises Part 776 of 34 CFR to read as follows:

PART 776—LIBRARY CAREER TRAINING PROGRAM

Subpart A—General

Sec.
776.1 Description of the Library Career Training Program.
776.2 Eligible parties.
776.3 Regulations that apply to grants.
776.4 Regulations that apply to contracts.
776.5 Definitions that apply to the Library Career Training Program.

Subpart B—Kinds of Projects for Which Grants Are Made

776.10 Types of projects.
776.11 Program objectives.
776.12 Project duration.

Subpart C—How To Apply for a Grant

776.20 Limitation on number of applications.
776.21 Application requirements.

Subpart D—How a Grant Is Made

776.30 How the Secretary judges applications.
776.31 Funding priorities—institute projects.
776.32 Funding priorities—fellowship projects.
776.33 Funding priorities—traineeship projects.
776.34 General selection criteria for evaluating applications.
776.35 Special selection criteria for evaluating institute applications.
776.36 Special selection criteria for evaluating fellowship applications.
776.37 Special selection criteria for evaluating traineeship applications.
776.38 Apportionment.

Subpart E—Conditions That Must Be Met by a Grantee

776.40 Fiscal requirements.
776.41 Limitation on costs.
776.42 Evaluation of institute and traineeship projects.
776.43 Institutional support.
776.44 Stipends for participants in fellowship projects.
776.45 Stipends for participants in institute projects.
776.46 Travel allowances for project participants.
776.47 Allowances for dependents of project participants.
776.48 Coordination with other groups.

Subpart F—The Administrative Responsibilities of a Grantee

776.50 Eligible participants.
776.51 Eligibility for fellowships.
776.52 Eligibility for traineeships.
776.53 Selection of participants.
776.54 Substitutions.
776.55 Payments to participants.
776.56 Payment adjustments.
776.57 Assistance under other Federal programs.

Authority: Part B of Title II of the Higher Education Act of 1965, as amended by Education Amendments of 1980, 94 Stat. 1383 (20 U.S.C. 1021).

Subpart A—General

§ 776.1 Description of the Library Career Training Program.

The Secretary awards grants and contracts for the purpose of—

(a) Training persons in librarianship through institutes, fellowships, or traineeships; and

(b) Establishing, developing, and expanding programs of library and information science, including new techniques of information transfer and communication technology.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021, 1032)

§ 776.2 Eligible parties.

Eligible applicants include—

(a) An institution of higher education that has or is planning to have a graduate or undergraduate library education program; and

(b) A library organization or agency that can conduct a training project consistent with the purposes of the Act.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.3 Regulations that apply to grants.

The following regulations apply to grants under the Library Career Training Program:

(a) The Education Division General Administrative Regulations (EDGAR) 34 CFR Parts 75 and 77.

(b) The regulations in this Part 776.

(20 U.S.C. 3474)

§ 776.4 Regulations that apply to contracts.

The regulations in this part do not govern procurement contracts under the Library Career Training Program. These contracts are subject to—

(a) Federal and Department procurement regulations in 41 CFR Chapters 1 and 34; and

(b) Requirements and criteria in particular requests for proposals (RFP's) published in the Commerce Business Daily.

(20 U.S.C. 3474)

§ 776.5 Definitions that apply to the Library Career Training Program.

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77: Applicant, Application, Award, Contract, Department, Grant, Grantee, Local Educational Agency, Nonprofit, Private, Project, Project period, Public, Secretary, State Educational Agency.

(b) Definitions that apply to this part. The following definitions apply to this part:

"Act" means the Higher Education Act, as amended.

"Dependent" means any of the following, provided that any person to be claimed in (1), (2) or (3) has received more than half of his/her support from the participant for the calendar year in which the school year begins:

(1) any relative by blood or marriage and any in-law of the participant;

(2) any individual living in the participant's household, so long as this relationship is not in violation of local law; and

(3) any legally adopted child or a child placed in the participant's home for adoption by a licensed child-placing agency.

"Fellowship" means an award to a participant engaged in a regular, full-time academic program in an institution of higher education that enables the participant to earn an academic degree.

"Institute" means an intensive short-term or regular-session project of specialized training designed to train individuals in particular principles and practices of librarianship.

"Institution of higher education" means an educational institution in any State which—

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association or, if not so accredited—

(i) is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet the accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

(ii) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (4), and (5). For purposes of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of training offered. Such term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

"Librarianship" means the study of the principles and practices of the library and information sciences, including the acquisition, organization, storage, retrieval, and dissemination of information and reference and research use of the library and other information resources.

"Library organization or agency" means a State library agency, a State educational agency, a public library, a local educational agency, a national, State, regional or local library association, or any other public or private agency providing library service programs.

"Non-self-contained institute" is one in which not all participants are receiving Federal support under this program.

"Paraprofessional" means a person with special skills or capacities for professional work who can support or complement a professional. The term includes positions identified as library assistant, technical assistant, library technician, media technician, library aide, but excludes positions characterized as clerical, service, and custodial. The minimum educational objective for these positions is participation in a course (or courses) leading to graduation from a junior or community college (or its equivalent) in a paraprofessional library curriculum.

"Participant" means an individual enrolled in a training project assisted with Federal funds under this part.

"Self-contained institute" is one in which all participants are receiving Federal support under this program.

"State agency" means the state agency designated under section 1203 of the Act.

"Traineeship" means an award to a participant enrolled in a discrete training program that is not a regular academic program.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021, 1032)

Subpart B—Kinds of Projects for Which Grants Are Made

§ 776.10 Types of projects.

A grantee may support—

(a) An institute project which provides persons with the necessary skills to enter the library field and provides professional librarians—including library educators—an opportunity to update their competencies.

(b) A fellowship project which provides full-time study in a graduate or undergraduate level program in libary and information science. The project may result in the award of a specific degree or may provide specialized training in some aspect of librarianship.

(c) A traineeship project which provides paraprofessional and professional librarians the opportunity to work and study in a discrete training project designed to fulfill individual professional goals.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021, 1032)

§ 776.11 Program objectives.

Applicants are encouraged to design projects that further the following objectives—

(a) Increasing the opportunities of minorities or the economically disadvantaged, or both, for training in librarianship;

(b) Increasing the opportunities for upward mobility of women and minorities through the advanced degree level programs;

(c) Training librarians to work more responsively with the disadvantaged; or

(d) Developing viable alternatives to traditional library service patterns including improved use of new techniques of information transfer and communication technology.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.12 Project duration.

(a) A fellowship project must provide at least one academic year but not more than 12 months of training.

(b) A short-term institute project must provide less than one academic year of training. The usual short-term training session is 1 to 12 weeks in length.

(c) A long-term institute project must provide at least one academic year but not more than 12 months of training.

(d) A traineeship project must provide at least three months but not more than 12 months of training.

(Section 222 of the Act; 20 U.S.C. 1032)

Subpart C—How To Apply for a Grant

§ 776.20 Limitation on number of applications.

(a) The Secretary publishes a notice of closing date each fiscal year in the **Federal Register.**

(b) In response to the notice of closing date, an applicant may submit—

(1) Only one application for a fellowship project;

(2) Any number of applications for institute and traineeship projects.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.21 Application requirements.

An applicant must demonstrate, on the application form furnished by the Secretary, that the proposed project meets the requirements of the Act and applicable regulations. The applicant must address each funding criterion.

(Section 222 of the Act; 20 U.S.C. 1032)

Subpart D—How a Grant Is Made

§ 776.30 How the Secretary judges applications.

(a) The Secretary evaluates an application for an institute project on the basis of the criteria in § 776.34 and § 776.35, and awards up to 207 possible points for these criteria.

(b) The Secretary evaluates an application for a fellowship project on the basis of the criteria in § 776.34 and § 776.36, and awards up to 108 possible points for these criteria.

(c) The Secretary evaluates an application for a traineeship project on the basis of the criteria in § 776.34 and § 776.37, and awards up to 111 possible points for these criteria.

(d) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.31 Funding priorities—institute projects.

The Secretary may, in any fiscal year, select from the following activities and announce in the **Federal Register** those to be given priority:

(a) Recruiting minority or economically deprived persons, or both, into the library field as professionals or paraprofessionals.

(b) Training or retraining professional librarians to serve the disadvantaged, including the aged and handicapped.

(c) Training professional librarians in the use of new techniques of information transfer and communication technology.

(d) Retraining professional librarians to achieve competence in other areas of special need, selected by the Secretary.

(e) Developing new methods for recruitment, training and the use of library personnel.

(f) Training or retraining individuals to obtain or improve skills in library administration, management or supervision.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.32 Funding priorities—fellowship projects.

The Secretary may, in any fiscal year, select from the following activities and announce in the **Federal Register** those to be given priority:

(a) Two-year associate degree level projects.

(b) Bachelor's degree level projects.

(c) Master's degree level projects.

(d) Post-master's degree or certificate level projects.

(e) Doctoral degree level projects.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.33 Funding priorities—traineeship projects.

The Secretary may, in any fiscal year, select from the following activities and announce in the **Federal Register** a priority for traineeships for individuals possessing a—

(a) Master's degree.

(b) Baccalaureate degree.

(c) Associate degree.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.34 General selection criteria for evaluating applications.

(a) The Secretary uses the following general selection criteria to evaluate applications for all new grants. Special selection criteria for institute, fellowship and traineeship projects are included in §§ 776.35–37.

(b) The general selection criteria are assigned different values for institute, fellowship and traineeship projects. The maximum values for the general selection criteria for each type of project are included in §§ 776.35–37.

(1) *Plan of operation.*

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.*

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(9)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.*

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.*

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.*

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.35 Special selection criteria for evaluating institute applications.

(a) The Secretary uses the special selection criteria in this section and the general criteria in § 776.34 to evaluate institute applications.

(b) The Secretary looks for information that shows—

(1) *The extent to which the proposed project is justified. (10 points)*

(i) The project will contribute to the preparation of librarians with specialized skills.

(ii) The proposed project addresses itself to an appropriate training need.

(iii) The subject is important and timely.

(iv) The proposed project addresses itself to the chosen annual priority(ies).

(2) *The extent to which participant selection is appropriate. (10 points)*

(i) The participant selection criteria are appropriate for the type of training being offered and realistic to meet project objectives.

(ii) The proposed training project is related accurately to the experience and duties of the participant.

(iii) The proposed number of participants can be accommodated by the proposed project method.

(3) *The extent to which the proposed project will be effective. (30 points)*

(i) The subject of the proposed project is appropriate for intensive or long-range training.

(ii) There is adequate project potential for the solution of the training problem or need.

(iii) The proposed professional education is in accorance with accepted standards.

(iv) There is a satisfactory blend of the theoretical and the practical.

(v) The training approaches are new and imaginative.

(vi) Participants will be involved in innovative and creative activities.

(vii) The proposed project will maintain focus on the subject.

(4) *The extent to which the institute format is appropriate. (5 points)*

(i) The type of institute (self-contained or non-self-contained) is properly chosen.

(ii) The proposed timing is well chosen.

(iii) The length of the institute is appropriate.

(5) *The extent to which program purposes will be achieved. (30 points)*

(i) The proposed project will contribute to librarianship training.

(ii) Prospects for employment or advancement will be provided.

(iii) Training opportunities will be provided for minority groups, or economically disadvantaged persons.

(6) *The extent to which there is potential for replication. (2 points)*

There is potential for reproducing the results of the project in other projects or programs for similar educational purposes.

(7) *The extent to which there is potential for dissemination. (5 points)*

There is potential for disseminating the results of the project and for making project material available to interested parties.

(8) *Plan of operation. (40 points)*

(9) *Quality of key personnel. (25 points)*

(10) *Budget and cost effectiveness. (15 points)*

(11) *Evaluation plan. (25 points)*

(12) *Adequacy of resources. (10 points)*

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.36 Special selection criteria for evaluating fellowship applications.

(a) The Secretary uses the special selection criteria in this section and the general criteria in § 776.34 to evaluate fellowship applications.

(b) the Secretary looks for information that shows—

(1) *Adequacy of project content. (9 points)*

(i) The character and scope of the proposed project are timely, realistic, up-to-date, and well-constructed.

(ii) Contemplated changes to regular academic curriculum are well conceived.

(iii) The catalog provides sufficient information about the program.

(iv) Common course requirements meet acceptable standards.

(v) The student field experience component is sufficient.

(2) *Adequacy of project content as related to objectives. (5 points)*

The objectives can be achieved by project content.

(3) *Adequacy of qualifications for admission. (10 points)*

(i) Selection criteria for fellows are suitable and sufficient.

(ii) Applied tests are well recommended.

(iii) Scholarship requirements are adequate.

(4) *Level of institutional expenditures. (10 points)*

(i) The ratio of institutional expenditures for education in librarianship to enrollment is satisfactory.

(ii) Expenditures are comparable to other library education programs with similar curricula and student enrollment.

(5) *Quantity of enrollment and degrees awarded. (5 points)*

(i) Enrollment and the number of degrees awarded by the institution are increasing.

(ii) The ratio of the number of degrees awarded to enrollment is satisfactory.

(6) *Quantity of institutional fellowships and scholarships. (5 points)*

(i) Institutional fellowships and scholarships are increasing.

(ii) The ratio of the requested number of Title II–B fellowships to the institutionally supported number is satisfactory.

(7) *Adequacy of prospects for increasing training opportunities. (15 points)*

(i) There is evidence that the proposed project will be adequately promoted and that there will be effective recruitment.

(ii) The level of training selected is appropriate to the applicant's capabilities or experience in this field.

(8) *Prospect for achieving program objectives. (10 points)*

(i) The extent to which the proposed project will substantially further the objective of increasing the opportunities of minority group persons, or economically disadvantaged persons, or both, for training in librarianship.

(ii) The extent to which the proposed project will substantially further the objective of training librarians to work more responsively with the disadvantaged.

(iii) The extent to which the proposed project will substantially further the objective of developing viable alternatives to traditional library service patterns.

(9) *Plan of operation. (14 points)*

(10) *Quality of key personnel. (10 points)*

(11) *Budget and cost effectiveness. (5 points)*

(12) *Evaluation plan. (5 points)*

(13) *Adequacy of resources. (5 points)*

(Section 222; 20 U.S.C. 1032)

§ 776.37 Special selection criteria for evaluating traineeship applications.

(a) The Secretary uses the special selection criteria in this section and the general criteria in § 776.34 to evaluate traineeship applications.

(b) The Secretary looks for information that shows—

(1) *Opportunities for minority groups, or disadvantaged persons. (17 points)*

The extent to which the proposed project will substantially further the objectives of increasing the opportunities of minority group persons, or economically disadvantaged persons, or both, for advanced training in librarianship.

(2) *Alternatives to traditional library service. (16 points)*

The extent to which the proposed project will substantially further the objectives of training librarians to work more responsively with the disadvantaged and developing viable alternatives to traditional library service patterns.

(3) *Internship opportunities. (16 points)*

The extent to which internship opportunities are available to participants through cooperating library agencies, and the appropriateness of those internship opportunities to the project objectives.

(4) *Behavioral objectives. (16 points)*

The extent to which behavioral objectives are appropriate as related to the project objectives and the participant selection criteria.

(5) *Individualized activities. (16 points)*

The extent to which project activities and objectives are individualized.

(6) *Plan of operation. (10 points)*

(7) *Quality of key personnel. (7 points)*

(8) *Budget and cost effectiveness. (5 points)*

(9) *Evaluation plan. (5 points)*

(10) *Adequacy of resources. (3 points)*

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.38 Apportionment.

At least 50 percent of the grants awarded by the Secretary under this part are for fellowships or traineeships.

(Section 222 of the Act; 20 U.S.C. 1032)

Subpart E—Conditions That Must Be Met by a Grantee

§ 776.40 Fiscal requirements.

(a) For fellowship projects, the Secretary may pay the costs described in § 776.43 (Institutional support), § 776.44 (Stipends for participants in fellowship projects), § 776.46 (Travel allowances for project participants), and § 776.47 (Allowances for dependents of project participants).

(b) For institute projects, the Secretary may pay the cost described in § 776.45 (Stipends for participants in institute projects), § 776.46 (Travel allowances for project participants), § 776.47 (Allowances for dependents of project participants), and 34 CFR 75.530. (EDGAR—General Cost Principles)

(c) For traineeship projects, the Secretary may pay either the costs described in (a) or (b) of this section.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.41 Limitation on costs.

(a) The grantee may not charge a participant that receives Federal support under this part tuition and fees, but may charge for room and board.

(b) In the case of a non-self-contained institute, regularly enrolled students of the grantee who are admitted to the institute may not receive stipends or travel allowances from the proceeds of the grant. The grantee shall pay a proportional share of the cost of the institute based on the number of regularly enrolled students who attend the institute.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.42 Evaluation of institute and traineeship projects.

An application for an institute or traineeship project must include an evaluation plan to be carried out by a third party. The evaluation plan must describe how the applicant will—

(a) Determine the extent to which objectives of the project are being met;

(b) Determine the factors responsible for the achievement—or lack of achievement—of the objectives of the project; and

(c) Encourage the inclusion of successful aspects of the project in other educational programs.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.43 Institutional support.

(a) The Secretary pays institutional support to a grantee in conjunction with a fellowship awarded to a participant to assist in covering the cost of courses of training in librarianship.

(b) The Secretary pays institutional support based on the training level of the project:

(1) For each fellowship awarded at the undergraduate level—$1500 for an academic year and $250 for a summer session.

(2) For each fellowship awarded at the master's level—$3500 for an academic year and $500 for a summer session.

(3) For each fellowship awarded at the post-master's and doctoral level—$5200 for an academic year and $800 for a summer session.

(c) The grantee is entitled to one-half the amount of institutional support for an academic year as soon as the fellow begins his training. The grantee is entitled to the second half when the fellow, or a substitute fellow, enrolls for the following academic term.

(d) If the fellow does not attend the summer session, the grantee is not entitled to the support for the summer.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.44 Stipends for participants in fellowship projects.

The Secretary pays stipends for participants in fellowship projects based on the training level of the project:

(a) Undergraduate level—$1500 for an academic year and $250 for a summer session.

(b) Master's level—$3500 for an academic year and $500 for a summer session.

(c) Post-master's and doctoral level—$5200 for an academic year and $800 for a summer session.

§ 776.45 Stipends for participants in institute projects.

The Secretary may pay stipends for participants in institute projects depending upon the nature and objectives of the training project. Stipends are based on the length and training level of the project:

(a) Long-term, full-time, post-baccalaureate level—$3500 for an academic year and $500 for a summer session.

(b) Long-term, full-time, pre-baccalaureate level—$1,500 for an academic year and $250 for a summer session.

(b) Long-term, full-time, pre-baccalaureate level—$1,500 for an academic year and $250 for a summer session.

(c) Short-term, full-time—$100 a week. A week is defined as any consecutive seven day period.

(d) Part-time—$20 a day. A day is defined as eight hours of training.

(Section 222 of the Act; 20 U.S.C.)

§ 776.46 Travel allowances for project participants.

The Secretary may authorize upon request of the project director travel allowances for participants only—

(a) in cases of extreme hardship; and

(b) if travel is necessary for successful participation in the project. The mileage rate shall be consistent with current Federal travel regulations.

(Section 222 of the Act; U.S.C. 1032)

§ 776.47 Allowances for dependents of project participants.

The Secretary may authorize upon request of the project director allowances for the dependents of project participants in cases of extreme hardship. The amount that may be provided is $450 for each dependent for an academic year, $50 for each dependent for a summer session. In the case of short-term projects, $20 for each dependent for a week may be provided.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.48 Coordination with other groups.

Each institution of higher education that receives a grant under this part shall annually inform the State agency designated under section 1203 of the Act of its project activities.

(Section 202 of the Act; 20 U.S.C. 1022)

Subpart F—The Administrative Responsibilities of a Grantee

§ 776.50 Eligible participants.

To be enrolled as a participant in a training project and receive Federal support an individual must be a national of the United States, or be in the United States for other than a temporary purpose, and intend to become a permanent resident of the United States; and—

(a) Be engaged in, or preparing to engage in, a profession or other occupation involving librarianship—this includes library paraprofessionals;

(b) Be concerned with the study or teaching of library media or information science;

(c) Have majored in library science at the undergraduate level; or

(d) Have a graduate degree in library science.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021 and 1032)

§ 776.51 Eligibility for fellowships

In addition to the requirements of § 776.50, to receive Federal support a participant in a fellowship project must—

(a) Have at least a high school diploma or its equivalent; and

(b) Have been accepted for enrollment on a full-time basis in a program of library and information science. A full-time basis means carrying a program load sufficient to allow the student to complete the course of study in the normal time period.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.52 Eligibility for traineeships.

In addition to the requirements of § 776.50, to receive Federal support a participant in a traineeship project must—

(a) Have at least a high school diploma or its equivalent, and

(b) Have been accepted for enrollment in a discrete program of study that is not a regular part of the academic program being conducted by an institution of higher education, library organizaton or agency.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.53 Selection of participants.

A grantee has the responsibility for the selection of project participants.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.54 Substitutions.

When a participant withdraws from a training project, another participant may be substituted by the grantee provided that the new participant can successfully complete the training project at no additional cost to the Government. The grantee shall notify the Department of Education in writing within 30 days of withdrawal or substitution of the participant.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.55 Payments to participants.

(a) An applicant must describe in the application the amount to be paid to participants for stipends, dependency and travel allowances. The grant includes the amount of stipends, dependency and travel allowances to be paid to the appropriate project participants.

(b) The grantee disburses the stipends, dependency and travel allowances to the appropriate project participants.

(c) If a participant fails to complete a period of training for which a stipend payment has been made, the grantee must recover the excess payment.

(d) If a substitution is not made when a participant withdraws from a training project, the grantee must refund to the Federal Government the remaining proportional share of stipends, dependency and travel allowances.

(e) A grantee may make no deductions from payments to participants except as provided in § 776.56.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.56 Payment adjustments.

(a) When a participant withdraws from a training project, the stipend and any dependency allowances the participant received must be prorated according to the number of weeks in the training period. Attendance in any part of a week is counted as a full week for the purposes of prorating a stipend.

(b) The date of withdrawal is the participant's last day of class attendance or the date the grantee determines that the participant has ceased to maintain academic proficiency.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.57 Assistance under other Federal programs.

(a) Any amount paid a participant from any other Federal grant program for educational purposes (except

veterans' and war orphans' and widows' educational assistance under Title 38, United States Code) must be set off against the amount the participant otherwise would receive under this part.

(b) A participant may not be prevented from receiving a loan that is made, insured or reinsured under any Federal educational loan program. The amount of the loan and payment of any Federal interest may not be deducted from the amount received by the participant under this part.

(Section 222 of the Act; 20 U.S.C. 1032 and 38 U.S.C. 1700, et seq.)

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Wednesday
December 24, 1980

Part XII

Department of Education

Strengthening Research Library Resources Program (Title II-C HEA)

DEPARTMENT OF EDUCATION

34 CFR Part 778

Strengthening Research Library Resources Program (Title II-C HEA)

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is issuing revised regulations for the Strengthening Research Library Resources Program. The regulations are being amended to reflect the changes mandated by the Education Amendments of 1980, the provisions of the Education Division General Administrative Regulations (EDGAR), and the proposed selection criteria published in the **Federal Register** on April 3, 1980.

The revised regulations are substantively the same as the previous regulations.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.**

The effective date is changed by statute if the Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank A. Stevens, U.S. Department of Education, (Room 3622, ROB-3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245-9530.

SUPPLEMENTARY INFORMATION: The Strengthening Research Library Resources Program makes financial assistance available to institutions with major research libraries. The purpose of the program is to promote research and education of higher quality throughout the United States by assisting those institutions to (1) maintain and strengthen their library collections, and (2) make their holdings available to other libraries whose users have need for research materials.

The Education Amendments of 1980 reauthorizes the Strengthening Research Library Resources Program without substantial change except the former limitation that no more than 150 institutions could receive a grant under this program in any fiscal year has been deleted from the statute. For the sake of consistency, minor changes in statutory language have been followed in the regulations.

These regulations are published in final form in order to make awards under the program early in 1981. Therefore, it is not possible to obtain public comment upon them at this time. However, it is intended that these regulations will undergo a more thorough and exhaustive revision at a later date for implementation in FY 1982, at which time these regulations will be made available for public comment.

These regulations also reflect, and are consistent with, the provisions of EDGAR. In conjunction with EDGAR, certain conforming amendments to the program regulations (45 FR 22534), as well as proposed selection criteria (45 FR 22820) were published in the **Federal Register** on April 3, 1980. No comments were received in response to the proposed selection criteria.

On November 14, 1980, the Secretary published a notice in the **Federal Register** of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States. The regulations in this document are based on regulations listed in the November 14 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

These regulations are being codified in Title 34 of the Code of Federal Regulations, along with other Department of Education Regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(20 U.S.C. 1021, 1041)

(Catalog of Federal Domestic Assistance No. 84.091, Strengthening Research Library Resources. Part I of OMB Circular A-95 does not apply to this program.)

Dated: December 19, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary revises Part 778 of 34 CFR to read as follows:

PART 778—STRENGTHENING RESEARCH LIBRARY RESOURCES PROGRAM

Sec.

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Authority: Part C of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980, 94 Stat. 1383 (20 U.S.C. 1021).

§ 778.1 Scope.

This part applies to the award of grants under Part C of Title II of the Higher Education Act of 1965, as amended by section 201 of the Education Amendments of 1980.

(Sec. 231 of the Act; 20 U.S.C. 1041)

§ 778.2 Regulations that apply to the Strengthening Research Library Resources Program.

(a) *Regulations.* The following regulations apply to the Strengthening Research Library Resources Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 778.

(20 U.S.C. 3474)

§ 778.3 Purpose.

The purpose of the program under this part is to promote research and education of higher quality throughout the United States by providing financial assistance to help the Nation's major research libraries—

(a) Maintain and strengthen their collections; and

(b) Make their holdings available to other libraries whose users have need for research materials.

(Sec. 201 of the Act; 20 U.S.C. 1021)

§ 778.4 Definitions.

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77:

Acquisition, Applicant, Application, Department, Fiscal Year, Grant, Nonprofit, Private, Project, Public, Secretary, and State.

(b) Definitions that apply to this part. The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended by section 201 of the Education Amendments of 1980.

"Branch campus" means a campus of an institution of higher education located in a community of the United States different from that of the parent institution, not within a reasonable commuting distance from the main

campus, and which has college level programs for which library facilities, services, and materials are necessary.

"Institution of higher education" means an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association or, if not so accredited, (A) is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purposes for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or (B) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (4), and (5). For purposes of this definition, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of training offered. The term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

"Primary clientele," with reference to a research library, means students, faculty, or other registered users of the applicant or grantee.

"State agency" means the State agency designated under section 1203 of the Act.

(Secs. 231 and 1201 of the Act; 20 U.S.C. 1041, 3474 and 3507)

§ 778.5 Eligibility for assistance.

(a) The Secretary awards grants under this part only to institutions with major research libraries. An institution with a major research library—

(1) Is a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research library, or a State or other public library; and

(2) Has a library collection which is available to qualified users that—

(i) Makes a significant contribution to higher education and research, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(1);

(ii) Is broadly based, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(2);

(iii) Is recognized as having national or international significance for scholarly research, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(3);

(iv) Is of a unique nature, and contains material not widely available, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(4); and

(v) Is in substantial demand by researchers and scholars not connected with the applicant institution, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(5).

(3) The requirements in paragraph (a)(2) of this section must be met by the library collection of the institution with a major research library applying for a grant. In the case of a consortium which applies as a public or private nonprofit institution, these requirements must be met by the library collection of the consortium institution and not by the separate collections of the members which make up the consortium.

(Sec. 231 of the Act; 20 U.S.C. 1041)

(b) *Ineligibility of section 211 or section 224 grantees.*

(1) An institution receiving a grant under section 211 of the Act (Resource Development Grants of the College Library Resources Program) or 224 of the Act (Special Purpose Grants under the Library Training and Research Development Program) is ineligible to receive a grant under this part in the same fiscal year.

(2) For purposes of this paragraph, each branch campus of an institution of higher education is deemed to be a separate institution.

(3) An institution of higher education must respond to the eligibility and application requirements and evaluation criteria in this part, as applicable, without regard to any of its library collections located at a campus which receives a grant in the same fiscal year under section 211 or section 224 of the Act, as amended.

(Sec. 231 of the Act; 20 U.S.C. 1041)

§ 778.6 Applications.

Each applicant for a grant under this part shall submit an application to the Secretary.

The application must include the following:

(a) Information sufficient to enable the Secretary to determine the eligibility of the applicant under § 778.5.

(b) A description of the methods and manner of administration of the proposed project, including any plan of acquisition.

(Sec. 231 of the Act; 20 U.S.C. 1041)

§ 778.7 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 110 points.

(a) *Significance as a major research library.* The strength of the applicant in meeting each of the following elements of a major research library:

(1) The extent to which the applicant's library collection makes a significant contribution to higher education and research. (16 points) Consideration will be given to such factors as—

(i) Major research projects for which the library has made resources available in the past fiscal year (only a general and brief summary of information is expected in the application);

(ii) For institutions of higher education, the amount the institution expended in Federal and/or other research funds, and the number of projects conducted by the institution with these funds in the past fiscal year;

(iii) Other evidence of substantial service to researchers and scholars; and

(iv) For institutions of higher education, the number of doctoral programs offered and the number of doctoral degrees awarded in the past fiscal year.

(2) The extent to which the applicant's library collection is broadly based. (12 points) Consideration will be given to such factors as—

(i) The breadth of the library collection with respect to the number of subject areas covered or the comprehensiveness of special collections in particular subject areas;

(ii) The size of the collection with respect to volumes and titles, manuscripts, microforms, and other types of materials; and

(iii) The number of current periodical subscriptions.

(3) The extent to which the applicant's library collection is recognized as having national or international significance for scholarly research. (8 points) Consideration will be given to such factors as—

(i) The number of interlibrary loans (including copies in lieu of originals) made by the applicant during the past fiscal year to libraries located outside the State in which the applicant is located;

(ii) The number of such loans to libraries located outside the regional geographic area in which the applicant is located;

(iii) The number of such loans to libraries located outside the United States;

(iv) The extent to which loans of the applicant's materials described in paragraphs (a)(3)(i)–(iii) of this section are made under cooperative arrangements by the applicant with libraries in other States, regions, and countries; and

(v) Other evidence of national or international significance for scholarly research.

(4) The extent to which the applicant's library collection is of a unique nature, and contain material not widely available. (8 points) Consideration will be given to such factors as—

(i) The number and nature of special collections containing research materials not widely available; and

(ii) The availability of printed (or otherwise published) catalogs or other guides to the special collections.

(5) The extent to which the library collection is in substantial demand by researchers and scholars not connected with the applicant institution. (4 points) Consideration will be given to such factors as—

(i) The number and type of institutions with which the applicant has formal, cooperative agreements for library and information services;

(ii) The extent to which the library lends more on interlibrary loans than it borrows; and

(iii) The extent of loan requests from users outside the library's primary clientele.

(b) *Nature of project.*

(1) The extent to which the specific objectives and activities of the project are designed to contribute to the purposes of this part (20 points) by—

(i) Helping the applicant to maintain and strengthen its library collection, with particular regard to whether the project builds upon one or more existing special collections of the applicant which have national or international significance for scholarly research; and/or

(ii) Making the applicant's research holdings available to other libraries for wider use by researchers and scholars. In applying this factor, the Secretary considers—

(A) The extent to which the project is designed to increase the availability of existing collections of the applicant which have national or international significance for scholarly research; and

(B) The extent to which the project will strengthen the applicant's capacity for participating in library networks and other cooperative library arrangements for sharing of library resources.

(2) The applicant's institutional commitment and capability to continue and build upon the Federal project upon its expiration (4 points).

(3) The extent to which the specific proposed activities and expenditures under the project are new and innovative activities or are designed to expand upon and supplement the applicant's activities and expenditures. (4 points)

(4) *Plan of operation.* (11 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(5) *Quality of key personnel.* (8 points)

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b) (5)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(6) *Budget and cost effectiveness.* (6 points)

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(7) *Evaluation plan.* (6 points)

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross reference—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(8) *Adequacy of resources.* (3 points)

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(c) *Projects eligible under other Federal programs.*

Notwithstanding the criteria in paragraphs (b)(8)(ii) (A) and (B) of this section, the Secretary will not fund a project eligible for assistance under other Federal programs authorizing grants to support research libraries, such as the Medical Library Assistance Act of 1965 (as amended by Pub. L. 93–353) unless the application—

(1) Documents that payments under this part will not duplicate payments under other Federal programs; and

(2) Demonstrates a special need for funding under this part.

(Section 231 of the Act; 20 U.S.C. 1041)

§ 778.8 Regional balance.

The Secretary endeavors to achieve a broad and equitable geographical distribution in the allocation of funds under this part by assigning a maximum of 15 additional points to applications which, if funded, would contribute to a regional balance. These points are assigned according to the following steps:

(a) Applications will first be evaluated on the basis of evaluation criteria in § 778.6 and a tentative slate will be prepared of the highest rated applications which would have been funded if regional balance were not considered. (These applications are referred to as the "highest rated applications".)

(b) The Secretary will pilot these highest rated applications to see their locations in terms of the following designated regional areas:

Area:

1. The New England States (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont).
2. New York State, Puerto Rico, and the Virgin Islands.
3. The Middle Atlantic States (Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and West Virginia).
4. The Southeastern States (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia).
5. The Great Lakes States (Indiana, Michigan, and Ohio).
6. The Midwest States (Illinois, Iowa, Minnesota, Missouri, and Wisconsin).
7. The Southwestern States (Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, and Texas).
8. The Mountain Plains States (Colorado, Kansas, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, and Wyoming).
9. The Pacific Northwest States (Alaska, Idaho, Oregon, and Washington).
10. California, Hawaii, American Samoa, and Guam.

(c) The Secretary will then assign 15 extra points to each of the three applications with the most points in each regional area which has two or fewer of the highest rated applications. For example, if the highest rated applications were all those with scores of 75 points and above, and a regional area had applications with scores of 82, 70, 62, and 55, 15 extra points would be awarded to each of the applications with 82, 70, and 62 points. The application with 55 points would not receive extra points.

(d) The Secretary may award 15 additional points, in accordance with the standards in paragraph (c), to applications to avoid causing regional areas which did not receive points under paragraph (c) to be left with two or fewer fundable applications.

(Section 232 of the Act; 20 U.S.C. 1041)

§ 778.9 Authorized activities.

(a) General.

Funds provided under this part may be used for activities or expenditures which achieve one or both of the purposes described in § 778.3, exclusive of construction costs. These authorized activities or expenditures may include, but are not limited to—

(1) Acquiring books and other additional materials to be used for library purposes;

(2) Binding, rebinding, and repairing books and other materials to be used for library purposes, and preserving such materials by making photocopies, by means of treatment to lengthen the life of paper or bindings, or by other means;

(3) Cataloging, abstracting, and making available lists and guides of library collections;

(4) Distributing library materials and bibliographic information to users beyond the primary clientele through the mail or through electronic, photographic, magnetic, optical, or other reprographic techniques;

(5) Acquiring additional equipment and supplies that will assist in making library materials available to users beyond the primary clientele;

(6) Hiring necessary additional staff to carry out activities funded under this part; and

(7) Communications with other institutions incidental to other activities under this part.

(Sections 201 and 231 of the Act; 20 U.S.C. 1021, 1041)

§ 778.10 Consultation with State agency.

Each institution of higher education which receives a grant under this part shall annually inform the State agency designated under section 1203 of the Higher Education Act, as amended, of its activities under this part.

(Section 202 of the Act; 20 U.S.C. 1022)

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